

VOL. IV

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

10-CR-219S

TONAWANDA COKE CORPORATION
MARK L. KAMHOLZ,

Defendants.

Proceedings held before the

Honorable William M. Skretny, U.S.

Courthouse, 2 Niagara Circle, Buffalo,

New York, on March 4, 2013.

APPEARANCES:

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U.S. Department of Justice,
Appearing for the United States.

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Appearing for Tonawanda Coke Corporation.

RODNEY PERSONIUS, ESQ.,
Appearing for Mark L. Kamholz.

Also Present: Lauren DiFillipo, Paralegal
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1 (Jury not present in the courtroom.)

2 THE COURT: It looks like we're relatively
3 assembled and ready to go.

4 THE CLERK: Criminal Case 10-219S, United
5 States of America versus Tonawanda Coke and Mark
6 Kamholz.

7 THE COURT: Okay. Welcome back,
8 everybody. Good morning.

9 MR. MANGO: Morning, your Honor.

10 MR. LINSIN: Morning, your Honor.

11 MR. PERSONIUS: Morning, your Honor.

12 THE COURT: Is there anything that we have
13 to take up preliminarily before I bring the jury
14 in?

15 MR. MANGO: No, I don't think so, your
16 Honor.

17 THE COURT: All right. What I'd like to
18 do for tomorrow, I'd like to start -- have you come
19 in here, if you can, about 8:45 and get set up. I
20 only have one minor calendar matter, and then we
21 can start right after that. So it should be five
22 or ten minutes after nine.

23 We'll need, I think, to break tomorrow at 3:45.
24 So where we pick up on the front end, we're going
25 to lose on the back end tomorrow. And I'll let the

1 jury know that that's our schedule, if that works
2 with everybody. Okay. That would be helpful.

3 Okay. Good to see everybody.

4 Chris, the jury's back so --

5 COURT SECURITY OFFICER: Yes, sir.

6 THE COURT: -- let's get them in, and
7 let's get started.

8 (Jury seated.)

9 THE COURT: Good morning. Hope you had a
10 good weekend. We couldn't wait to get you back
11 here. So please have a seat.

12 Although, Mrs. Lambert, I understand you took a
13 little slide today as you entered the building.
14 Are you doing okay?

15 A JUROR: Yeah, I'm okay. Thank you.

16 THE COURT: Okay, good. We've got to get
17 you those high traction shoes for the rest of the
18 trial so it doesn't happen again.

19 A JUROR: I'll call my husband at lunch
20 and tell him to bring me my flat shoes.

21 THE COURT: Whatever it takes. Whatever
22 it takes.

23 Okay. As everybody knows, I think by now, the
24 attorneys and parties are back, present. And we're
25 about ready to start the case of Tonawanda Coke

1 Corporation and Mark Kamholz, both defendants. The
2 jury is here, roll call waived.

3 And this is actually week number 2. And just
4 for purposes of reintroduction, we'll maybe try
5 that for two weeks or so in a row so you get to put
6 names to faces if you don't already know. Unless
7 the individuals change their names for purpose of
8 the trial, I don't know.

9 But we have Aaron Mango and Rocky Piaggione at
10 the government's table. And in that second table
11 we have Robert Conway, who is basically our summary
12 witness and case agent. And Lauren DiFillipo,
13 who's been working all of the technology so far.
14 So you know those faces and those individuals.

15 And on the other side, so to speak, we have
16 Greg Linsin and Jeanne Grasso and Paul Saffrin at
17 the first table. And Mr. Saffrin is president of
18 Tonawanda Coke Corp. At the far table we have
19 Rodney Personius, and Mark Kamholz, the
20 defendant -- individual defendant in the case. And
21 then at the far table, always quiet, but Ariel
22 Glasner and Sheila Henderson. So that's, I think,
23 our full complement of individuals. And you know,
24 of course, Michelle and Mary. And that's our crew
25 starting out the week. So it's good to have you

1 back.

2 And I know I speak for everybody. And you know
3 what we're talking about, we're talking about a
4 case that's important to both sides. And you are
5 the ones that decide those fact issues using your
6 common sense, experience, and intelligence applied
7 to what you hear and are presented with here in
8 this particular courtroom, not outside the four
9 walls. And your job is to return a unanimous
10 verdict.

11 We have 19 counts in the indictment, and
12 they're broken down into counts that involve the
13 Clean Air Act, 15 or so of the counts, and then the
14 others relate to RCRA, that's the other
15 environmental act, and an obstruction of justice
16 count. So that's the indictment.

17 You'll get a copy of that, but keep in mind
18 that the indictment is not evidence, nor what the
19 attorneys say or what we argue or discuss, that's
20 not evidence. What you hear from the witnesses,
21 the documents, and the stipulations, that's the
22 evidence from which you decide, or the lack
23 thereof. Keeping in mind that the government in
24 this case has the burden of proof beyond a
25 reasonable doubt as to each essential element of

1 the crime charged. And both defendants are
2 presumed innocent until and if they, to your
3 satisfaction, are proven guilty beyond a reasonable
4 doubt. So that's where we're at.

5 I think we're ready. We all appreciate the
6 fact that you were here timely. Tomorrow, a little
7 different schedule. We'd like to start as close to
8 9:00 o'clock as we can. I only have one matter at
9 9:00 o'clock, so it should be over in five minutes
10 or so. So we should start -- if you can get here
11 by nine, that would be great. If you can't, we'll
12 wait. The attorneys are able to be assembled. But
13 we will break at 3:45 tomorrow, all right? So we
14 pick up a little time on the one end, we lose it on
15 the other end, but we should have a productive day.
16 So that's the schedule for tomorrow. Is that okay
17 with everybody?

18 Okay. You've been terrific so far. Let's see
19 if we can start the case on a Monday on the right
20 foot.

21 Mr. Mango, let's see what you can do.

22 MR. MANGO: We're ready, your Honor.

23 THE COURT: Do you have a witness ready?

24 MR. MANGO: Yes, your Honor. The
25 government would call Anthony Brossack.

1 THE COURT: Okay. Mr. Witness, if you
2 would approach the witness stand. Don't enter it,
3 but -- I'll tell you when to stop. Right about
4 there. You're going to be asked to face the jury,
5 please, so we can administer an oath to you.

6 A N T H O N Y B R O S S A C K, having been duly
7 sworn as a witness, testified as follows:

8 THE COURT: Okay. Good morning. Be
9 careful when you get in there. Okay. Just some
10 preliminary instructions. The microphone is pretty
11 friendly, but don't get right on top of it like
12 that. Speak in a conversational tone at the
13 microphone. You're here to testify for the benefit
14 of the ladies and gentlemen of the jury. If you
15 keep your voice up at a conversational tone,
16 everybody will hear you just fine.

17 Couple of rules that help, if you comply with
18 them. If you don't understand a question, don't
19 answer it. Ask the attorneys or me or whoever's
20 asking the question to repeat it. Try to be as
21 succinct with your answer as you can. If you can
22 answer it yes or no, try to do that. When you
23 volunteer information, that's when things become
24 complicated.

25 If there is an objection, wait until I rule on

1 the objection, and then I'll tell you either answer
2 the question, wait for another one, or whatever
3 similar instruction might be appropriate.

4 Do you understand?

5 THE WITNESS: Yes.

6 THE COURT: Okay. State your full name,
7 but at the microphone, and spell your last name,
8 and then we'll know if you're going to be picked up
9 reasonably well. You might get up a little closer
10 than that.

11 THE WITNESS: Anthony Brossack,
12 B-R-O-S-S-A-C-K.

13 THE COURT: Okay, Mr. Brossack.
14 Your witness, Mr. Mango.

15 MR. MANGO: Thank you, your Honor.

16 DIRECT EXAMINATION BY MR. MANGO:

17 Q. Good morning, Mr. Brossack.

18 A. Good morning.

19 Q. Are you currently employed?

20 A. Yes, I am.

21 Q. How -- why don't you tell the jury how you're
22 currently employed?

23 A. At Tonawanda Coke.

24 Q. And what position are you in at this point?

25 A. At this point I'm helping out down front at

1 Vanocur.

2 Q. Okay. Can you tell the jury what Vanocur is?

3 A. It's a refractory manufacturer.

4 Q. Is it associated with the Tonawanda Coke
5 Corporation?

6 A. Yes, it is.

7 Q. Have you worked before at the Tonawanda Coke --

8 A. Yes, I have.

9 Q. -- facility?

10 A. Yes. I'm sorry.

11 Q. What position -- what was your most recent
12 position at the Tonawanda Coke Corporation?

13 A. Battery foreman.

14 Q. All right. Can you tell the jury what -- what
15 it means -- first, just what a battery is and then
16 what a battery foreman does.

17 A. Battery is a bank of ovens. We have 60 in our
18 battery. A battery foreman more or less supervises
19 people, the operation of the battery, making sure
20 the ovens get pushed on time, they're charged
21 correctly, everything there is -- that your
22 settings are right, everything is going the way
23 it's supposed to go. You're there to supervise.

24 Q. How long have you worked for the Tonawanda Coke
25 Corporation?

1 A. Thirty-two years.

2 Q. And in your 32 years there, have you held any
3 other positions other than battery foreman?

4 A. Yes, I have.

5 Q. Okay. If you could briefly tell the jury what
6 other types of positions you've held and the
7 approximate time periods.

8 A. In 19 -- February of 1981 I started as a
9 security officer, and I believe it was February of
10 '88, someplace around there, I got promoted out as
11 the yard foreman, which is the railroad foreman.

12 In 1990 I went to coal handling. I believe it
13 was a year or two after that I went to coke
14 handling. Then in '94 I went on the battery and in
15 charge of the door environmental program for the
16 303. And then after that, just -- I believe it
17 was 2000 -- I'm sorry. I'm sorry. 1997 one of the
18 general foremen had a serious injury, an accident,
19 and I took over his crew as what we call a shift
20 foreman, which is general foreman. I worked a
21 rotating shift, had my own crew, and, again, made
22 sure that the operations, the ovens pushed on time,
23 right -- right into production of it.

24 THE COURT: If you just you move up just a
25 little bit.

1 THE WITNESS: I'm sorry.

2 THE COURT: What you're doing is you're
3 swirling in your chair --

4 THE WITNESS: I'm sorry.

5 THE COURT: -- and it detracts from the
6 microphone catching you.

7 THE WITNESS: And then in 2003 I came off
8 the battery and went back to coal handling. I was
9 supposed to go out at -- at the -- our Bethlehem
10 plant or our Bethlehem site to supervise dumping
11 the coal that was brought into our plant. That
12 never came about, so I was kind of just floating.
13 So I just floated -- I went back to battery and
14 became what we call just a battery foreman. I went
15 back helping out anything I can: The general
16 foreman, the head heater, again, the door program.
17 Anything I can possibly do to just give them a
18 hand.

19 BY MR. MANGO:

20 Q. Okay.

21 A. I'm just trying to get my order here. Yeah.
22 In 2004, I had a slight sickness and I had to take
23 some time off from work and then came back at the
24 position of just battery foreman, a day battery
25 foreman.

1 Q. Okay. You briefly mentioned the door and
2 environmental program. You mentioned the numbers
3 303.

4 A. 303.

5 Q. Just real briefly, if you could tell the jury
6 what you mean by that.

7 A. They come in daily. It's an -- it's a
8 third-party contractor, and they come in daily and
9 they monitor the door emissions, any door
10 emissions, any top side emissions, and in five
11 consecutive charges how many emissions are off of
12 those.

13 Q. Top side emissions. What do you mean when you
14 say "top side" --

15 A. Lids and off-takes. The off-takes are what
16 draw the gas off the battery. The lids are where
17 you charge the battery from. And you have to make
18 sure that's all sealed up after the battery -- or
19 after the oven is charged.

20 Q. Okay. So you've held a number of positions.
21 And in all of those positions, have you now come to
22 be familiar with the process of turning coal into
23 coke?

24 A. Yes.

25 Q. All right. I'm going to ask you to explain

1 that process for the jury. And if we could start
2 with -- if we could pull up Government
3 Exhibit 105.42, which is in evidence.

4 Do you see that on the screen --

5 A. Yes, I do.

6 Q. -- Mr. Brossack?

7 A. Yes, I do.

8 Q. If we could focus in there. With that on your
9 screen -- actually, if we can focus in the whole
10 thing.

11 With that on your screen, Mr. Brossack, why
12 don't you start -- why don't you tell the jurors
13 just what's the first step in -- obviously it takes
14 coal, right?

15 A. Right.

16 Q. So why don't you tell the jurors how the coal
17 gets to the facility and where it's stored.

18 A. Well, your low vol coal would be over here.

19 Q. Would do you mean "low vol"?

20 A. It's low volatility. There's not just one coal
21 used to make coke. There's a mixture of coal.

22 Q. Okay.

23 A. It's -- it's -- I don't really understand who
24 makes the mixes and, you know, everything involved
25 in it, but you have a certain way that you have

1 to -- to -- there's certain percentages of
2 different coals that go into the mix. So your --
3 your -- your low vol would be on one side, your
4 high vol would be over on this side.

5 Q. Okay.

6 A. And every once in a while we get a mid vol,
7 which if I remember right, to my knowledge, it
8 hasn't been there in a while. It also went on the
9 north side of seven belt, which is over here.

10 Q. So where I've drawn a line, just above that, is
11 that what you're calling seven belt?

12 A. That's seven belt.

13 Q. Why don't you tell the jurors what the purpose
14 of seven belt is and --

15 A. Right now all we use seven belt for is if we
16 get coal in the dump -- right here is the stacker.
17 And I'm trying to find the dumper here. I'm sorry.

18 The dumper is right there. And the coal is
19 dumped, runs through a series out through the loop,
20 and then stacked in the field. Most of the coal
21 now comes in by truck, and that's put down here
22 farther.

23 Q. Okay. So the coal comes in by truck and is
24 deposited here where I drew the circle?

25 A. Yes.

1 Q. All right. And at some point that coal is then
2 brought out to the field?

3 A. That is the field.

4 Q. Well, it's dumped. The trucks dump it --

5 A. Dump it -- right.

6 Q. Okay.

7 A. And then from there it would be -- I believe
8 that's the new system, Baby 10, where they start
9 sending the coal up to the building.

10 Q. Okay. Can you describe -- again, a lot of
11 these terms the jury is not familiar with. So Baby
12 10 --

13 A. Baby 10 is a small hopper with a belt. It runs
14 the coal onto ten belt. Ten belt, believe it or
15 not, runs all the way underground to about here.
16 That runs to 14. 14 runs it up onto 15. 15 runs
17 it up to the building. Then an elevator, and then
18 it brings it up to one stationary shuttle. And you
19 have a series of bins upstairs that you move
20 another shuttle to put the different coals in.
21 There's seven bins up there that -- you move the
22 shuttle. Depending on what coal goes in what bin
23 is where you put that shuttle.

24 Q. Okay. So I think you mentioned belts 14 and
25 15. Are those also underground?

1 A. At the 14 -- 14, no. 15, the tail, which would
2 be the bottom of the belt, is underground, and then
3 goes up this incline right here.

4 Q. And we'll look at another picture in a minute.
5 So, at some point the coal comes in, separated, and
6 then is brought by way of conveyors and belts to --

7 A. To the building.

8 Q. What's that building called?

9 A. Coal handling.

10 Q. Okay. I'd like to pull up Government
11 Exhibit 049.17 for identification purposes, and
12 absent an objection, your Honor, I would move this
13 into evidence.

14 MR. LINSIN: No objection, your Honor.

15 MR. PERSONIUS: No objection, your Honor.

16 THE COURT: Okay. 049.17 received. No
17 objection. It may be published.

18 (Government's Exhibit 49.17 was received
19 into evidence.)

20 BY MR. MANGO:

21 Q. Mr. Brossack, do you see that picture on your
22 screen?

23 A. Yes, I do you.

24 Q. Okay. So you just mentioned there is this
25 building called the coal handling building.

1 A. Yes.

2 Q. Where is the coal handling building on this
3 screen?

4 A. Right here. This is your coal handling
5 building.

6 Q. And if you can, describe what happens in the
7 coal handling building for the jury, please.

8 A. Your raw coal bins are up here. They -- they
9 have hopper -- I'm sorry. They have small feed
10 belts down on the mix table, and those are adjusted
11 to how much of that particular coal goes into the
12 mix. Just about all of them run all at the same
13 time with different percentages. They run off the
14 east and west feed belt into what we call the
15 pulverizer.

16 The pulverizer pulverizers the coal so it -- it
17 is still raw coal, but it's more workable. It can
18 be mixed better. Then it's run up number 2
19 elevator to -- I'm -- I'm trying to remember the
20 belts here. Number 2 to 17, 17 to 18, which is --
21 this is 18 incline right here. And these are the
22 coal bunkers, up on top of the battery where the
23 finished product goes, and the charge car comes in,
24 gets the coal, the mixed coal to charge ovens.

25 Q. Okay. So in the coal handling building here,

1 that is where the coal is -- is it blended together
2 there?

3 A. Yes.

4 Q. So different coals are mixed together?

5 A. Yes.

6 Q. And you mentioned a pulverizer. The pulverizer
7 machine, is it in that building?

8 A. Yes.

9 Q. Is any other material added to the coal in that
10 building?

11 A. Yes. Bulk density oil.

12 Q. Bulk density oil. At some point, once the
13 mixture is ready, it goes along -- was that 18
14 belt?

15 A. Where are you pointing?

16 Q. This incline here?

17 A. Yeah, that's 18.

18 Q. Okay. It goes on 18 belt and goes into this
19 building here. What would you call that building?

20 A. This one here?

21 Q. Yes.

22 A. That's the battery. That's part of the
23 battery. Right here where -- where the coal
24 bunkers are and where we get the coal, we call the
25 scale floor.

1 Q. The scale floor.

2 A. That's where the charge car runs in to get the
3 coal to charge the oven.

4 MR. MANGO: If we can, your Honor, pull up
5 Government Exhibit 115.13 for identification
6 purposes, and absent an objection, move that into
7 evidence.

8 THE COURT: It's another photo?

9 MR. MANGO: Yes.

10 MR. LINSIN: No objection, your Honor.

11 MR. PERSONIUS: No objection, your Honor.

12 THE COURT: Okay. 115.13 received. No
13 objection. And may be published.

14 (Government's Exhibit 115.13 was received
15 into evidence.)

16 BY MR. MANGO:

17 Q. Mr. Brossack, can you tell the jury what we're
18 looking at now from this photograph?

19 A. Over to the left here would be coal handling.
20 It's hard to see, but coke handling is in the
21 middle, and then the battery or the ovens are right
22 here.

23 Q. Okay. What is this building there?

24 A. That's our boiler house.

25 Q. What is this structure there?

1 A. Hit that again. I'm sorry. This right here?

2 Q. Yes.

3 A. That's the quench station, number 2 quench
4 station.

5 Q. Okay.

6 MR. MANGO: Your Honor, if we can pull up
7 Government Exhibit 115.47 for identification
8 purposes, and absent an objection, move this into
9 evidence.

10 THE COURT: Okay. That's another photo?

11 MR. MANGO: Yes, your Honor.

12 MR. LINSIN: No objection, your Honor.

13 MR. PERSONIUS: No objection, your Honor.

14 THE COURT: Okay. No objection. 115.47
15 received and will be published.

16 (Government's Exhibit 115.47 was received
17 into evidence.)

18 MR. MANGO: Thank you, your Honor.

19 BY MR. MANGO:

20 Q. Mr. Brossack, do you see that picture on your
21 screen?

22 A. Yes, I do.

23 Q. Okay. Can you tell the jury what -- what this
24 exhibit depicts?

25 A. That's the -- the tank car that holds the

1 bulk -- bulk density oil --

2 Q. Okay.

3 A. -- for the -- for the coal handling building.

4 Q. So as you mentioned, the coal gets mixed,
5 pulverized, and then oil is added to it?

6 A. Oil is added while it's mixed, before it hits
7 the pulverizer.

8 Q. Okay. And the oil is stored where?

9 A. In this car right here.

10 MR. MANGO: Your Honor, the government
11 would ask to pull up Government Exhibit 115.52 for
12 identification purposes, and absent an objection,
13 move this into evidence.

14 THE COURT: Okay. That's another photo?

15 MR. MANGO: Yes.

16 MR. LINSIN: No objection, your Honor.

17 MR. PERSONIUS: No objection.

18 THE COURT: Okay. No objection. 115.52
19 received and may be published.

20 (Government's Exhibit 115.52 was received
21 into evidence.)

22 MR. MANGO: Thank you.

23 BY MR. MANGO:

24 Q. Mr. Brossack, what are we looking at here in
25 this photograph?

1 A. That -- excuse me. There is your bulk density
2 car, and there is the line that runs up to the
3 table, that mix table with the bulk density oil.

4 Q. Okay. When you use the term "mix table",
5 again, describe that.

6 A. That is the table I was telling you had the
7 feed belts, the two feed belts, that run down into
8 the pulverizer. We call that the mix table.

9 Q. How big -- I'm thinking of a kitchen table.

10 A. No. Probably a little better than the length
11 of this room.

12 Q. Okay. And who operates that mixing table?

13 A. One of the hourlies. I'm not sure who operates
14 it now.

15 Q. One person?

16 A. One person.

17 Q. All right. And up in this picture here, what
18 is this thing that I just put the arrow on?

19 A. That's 18 incline again.

20 Q. Okay. That's a view from the bottom of that?

21 A. Yes.

22 Q. Once the finished product goes over to the
23 battery?

24 A. Yes.

25 Q. Okay. Describe the process by which coal, the

1 mixed and finished coal, gets actually loaded into
2 the battery or into the ovens.

3 A. It's put into the charge car. The charge car
4 runs out on rails. There's boots that are dropped,
5 and there's turntables on the three hoppers. And
6 the turntables feed the coal into the oven.

7 Q. Okay. So the hoppers -- let's just break that
8 down. The hoppers are on the charge car?

9 A. On the charge car.

10 Q. Okay. And there's the boots. What are these
11 boots?

12 A. The boots drop over the charging holes.

13 Q. How many charging holes are there --

14 A. Three.

15 Q. -- for each oven?

16 A. Three.

17 Q. Okay. So there's three then boots that come
18 off this charging car?

19 A. There's three -- there's three boots that drop
20 down on -- from the -- from the charge car, and
21 then you have your jumper holes.

22 Q. How long does it take to charge one oven?

23 A. It would be -- it would depend on how wet or
24 dry the coal is. We -- we've had them as low as
25 maybe six or seven minutes, and if the coal is very

1 wet and gets hung up in the charge car, it can take
2 you up to 15.

3 Q. All right. Does the charge car -- it holds the
4 coal that is going into the oven, is that right?

5 A. Right.

6 Q. Does it hold enough coal to charge multiple
7 ovens or just --

8 A. No, just the one. Just one oven at a time.

9 MR. MANGO: Your Honor, the government
10 would ask to put up Government Exhibit 130.13 for
11 identification purposes, and absent an objection,
12 move that into evidence.

13 MR. LINSIN: No objection, your Honor.

14 MR. PERSONIUS: No objection, your Honor.

15 THE COURT: Okay. 130.13 you said?

16 MR. MANGO: Yes, your Honor.

17 THE COURT: Okay. Received. No
18 objection. And may be published.

19 (Government's Exhibit 130.13 was received
20 into evidence.)

21 BY MR. MANGO:

22 Q. Mr. Brossack, can you tell the jury what we're
23 looking at here.

24 A. That's -- this is the south side of the charge
25 car. This is the south hopper. And these two

1 gentlemen here appear to be putting down the jumper
2 pipe.

3 Q. Okay. Describe for the jury what the jumper
4 pipe is.

5 A. The jumper pipe runs from the charging oven to
6 the sister oven in front of it, and use aspiration
7 from both ovens to draw the gas down to keep the
8 emissions down.

9 Q. Okay. What do you mean "aspiration"?

10 A. Aspiration -- we put steam into the oven. On
11 the off-takes, there's what you call a steam jet.
12 And when you -- when you turn that on, it actually
13 makes a suction to pull the gases off the oven
14 while you're charging it.

15 Q. Okay. Can you point to, and just put a little
16 note on the actual jumper here, if you can see it?

17 A. That's the jumper pipe.

18 Q. Okay. Is it -- does it curve around there?

19 A. It's -- yeah, it's a 180-degree L.

20 Q. And does it -- is it fair to say it connects
21 one oven --

22 A. To the other oven.

23 Q. -- to the adjoining oven?

24 A. To the one in front of it, yes.

25 Q. Okay. And what is this machine over there?

1 A. That's the -- the boot I was telling you went
2 down on the charge hole. And this is the hopper
3 here that feeds the coal through the oven.

4 Q. Okay. So, from looking at this photo, could
5 you tell if an oven is being charged at this point?

6 A. It appears to me, yes, it is being charged or
7 in process of beginning charge.

8 Q. All right. So one of the holes here that
9 directly accesses the oven is right there?

10 A. Down underneath there, yes.

11 Q. Now, you've mentioned what a battery is, and it
12 consists of the ovens. Do you have different terms
13 for the different sides of the battery?

14 A. The different?

15 Q. The different sides, one side versus the other.

16 A. One side is the pusher side. The other side is
17 the coke side.

18 Q. Okay. One side is the pusher side?

19 A. Pusher side.

20 MR. MANGO: Your Honor, the government
21 would ask to bring up Government 130.01 for
22 identification purposes, and absent an objection,
23 move that into evidence.

24 THE COURT: Okay. 130.01.

25 MR. LINSIN: No objection, your Honor.

1 MR. PERSONIUS: No objection, your Honor.

2 THE COURT: Okay. Received. No

3 objection. May be published.

4 (Government's Exhibit 130.01 was received
5 into evidence.)

6 BY MR. MANGO:

7 Q. All right. Can you, please, tell the jury what
8 we are looking at here?

9 A. You're looking at the pusher side of the
10 battery, and that's the pusher, that large machine
11 right here.

12 Q. Okay. And what -- again, tell the -- tell the
13 jury what -- what the pusher is designed to do.

14 A. The pusher's designed to -- it takes the pusher
15 side doors off of the oven, swings them out of the
16 way. There is a big ram on the -- on the machine
17 that actually pushes the hot coke out of the oven
18 all the way through.

19 Q. So are the doors taken off on the other side?

20 A. Yes.

21 Q. We'll get to that side in a minute. If we can
22 just -- if you could, point out some other features
23 on this photograph. For example, what is this long
24 pipe going there?

25 A. That's number 2 crossover. That's what draws

1 the -- or once the gas is drawn off the battery,
2 that's what takes it over to the by-products.

3 Q. Okay. So that is one of the pipes that pulls
4 coke oven gas off the battery?

5 A. Yes.

6 Q. Look at a different picture of this. But what
7 is that structure right there?

8 A. That's our flare stack.

9 Q. All right. You mentioned on the pusher side
10 the doors get taken off?

11 A. The one door of the oven you're going push,
12 yes.

13 MR. MANGO: Your Honor, the government
14 would ask to pull up Government Exhibit 130.03 for
15 identification purposes, and absent any objection,
16 move that into evidence.

17 THE COURT: 130.03.

18 MR. LINSIN: No objection, your Honor.

19 MR. PERSONIUS: No objection, your Honor.

20 THE COURT: Okay. Received and may be
21 published.

22 (Government's Exhibit 130.03 was received
23 into evidence.)

24 MR. MANGO: Thank you, your Honor.

25 BY MR. MANGO:

1 Q. Mr. Brossack, what are we looking at here, if
2 you can tell the jury?

3 A. These are the pusher side doors.

4 Q. All right. And how do these actually come off?

5 A. There is a hydraulic jack, I suppose you'd call
6 it, on the machine that -- the extractor goes
7 around, goes in to -- there's hooks that go up
8 underneath here and here, and right here and here
9 are the door latches and they're spring loaded.
10 And the -- the hydraulics of the machine -- I'm
11 sorry. The hydraulics of the machine push those --
12 those buttons on the latches in to take the
13 pressure off of them. And then there's what we
14 call latch lifters that lift the latches of the
15 door up. And then you can pull it back and move it
16 out of the way and push the oven.

17 MR. MANGO: Your Honor, the government
18 would ask to pull up Government Exhibit 49.16 for
19 identification purposes, and absent an objection,
20 move that into evidence.

21 THE COURT: 49.16?

22 MR. MANGO: Yes, your Honor.

23 MR. LINSIN: No objection.

24 MR. PERSONIUS: No objection, your Honor.

25 THE COURT: Okay. Received. No

1 objection. It may be published.

2 (Government's Exhibit 49.16 was received
3 into evidence.)

4 BY MR. MANGO:

5 Q. Mr. Brossack, can you tell the jury now what
6 this photograph depicts?

7 A. I'm trying to see which -- this one here would
8 probably be number 2 crossover right here. This is
9 the main. Again, this is the pusher side doors.
10 There is a flare stack. It's not a very good
11 picture. The pusher is right here. The coal
12 bunkers are up here. This is the escania
13 (phonetic) house.

14 COURT REPORTER: Do you know how do you
15 spell "escania"?

16 THE WITNESS: I don't know, ma'am. I have
17 to be honest with you. I'm sorry.

18 BY MR. MANGO:

19 Q. So, let's just focus -- that was -- what you
20 mentioned was the escania house?

21 A. Yes.

22 Q. Okay. It's spelled as it sounds, I guess. And
23 what is the escania house designed to do?

24 A. That regulates the back pressure on the
25 battery.

1 Q. Okay.

2 A. There's two of them up there. One for number 1
3 and one for number 2 crossover.

4 Q. And -- all right. You put a dot on the flare
5 stack here?

6 A. Yes.

7 Q. This item?

8 A. Yes.

9 Q. Okay. Let's talk about that for a minute.
10 What is the purpose of the battery flare stack, if
11 you can tell the jury?

12 A. If you lose the exhausters, withdraw the gas
13 off the battery, you -- the gas has no place to go.
14 So what you do is go up and open this up and the
15 gases are expelled through there, so it takes the
16 pressure off the battery so you don't have any
17 problems with -- with any lids popping or anything
18 like that. You don't want excessive bad pressure
19 on the battery. It's not good. So, when you open
20 this up, it's a manual valve, right here, when you
21 open that up, it lights off the gas so you can take
22 pressure off. It's kind of like the exhaust pipe
23 on your car, I guess would be the best way to
24 describe it.

25 Q. How is -- how is that battery flare stack lit?

1 A. There is a pilot light on it.

2 Q. Okay. How many times have you seen -- in your
3 career at Tonawanda Coke Corporation, approximately
4 how many times have you seen that battery flare
5 stack lit?

6 A. I'd say eight or nine times, maybe more. I'd
7 say probably eight or nine.

8 Q. Okay. And during those eight or nine times
9 what -- what happened to cause the battery flare
10 stack to have to be used?

11 A. We'd lose the exhauster.

12 Q. And how long would you lose exhausters for?

13 A. Depending on what the problem was, it could be
14 anyplace from -- if you had a good BP operator, he
15 could probably switch you over to the other
16 exhauster within eight or nine minutes. If you
17 lost power and couldn't get the exhausters back,
18 could be until you got power back. I mean, an
19 hour, two hours. It all depended.

20 Q. Okay. So how does the -- you mentioned a pilot
21 light. There is a pilot light on this?

22 A. Yes, sir.

23 Q. How does the pilot light work?

24 A. It runs off of natural gas.

25 Q. Has this structure always had a pilot light?

1 A. No, sir.

2 Q. When was the period of time that it did not
3 have a pilot light?

4 A. I believe it was from around '94,
5 '95 until 2009, I want to say. 2008 or '9,
6 someplace in there.

7 Q. All right. What happened to the pilot light?

8 A. The -- the gas was shut off.

9 Q. Did you have a conversation with anyone
10 regarding the gas to that pilot light?

11 A. Yes, I did.

12 Q. Who did you have a conversation with?

13 A. Mark Kamholz.

14 Q. Okay. Do you see Mr. Kamholz here in the
15 courtroom today?

16 A. Yes, I do, sir.

17 Q. Okay. Can you just point to him, identify an
18 article of clothing he's wearing?

19 A. He's right there, sir.

20 MR. MANGO: All right. I note, your
21 Honor, for the record, the defendant stood up
22 during that identification. I'd ask the defendant
23 be identified.

24 THE COURT: Yes. The record will reflect
25 the identification of the Defendant Mark Kamholz.

1 BY MR. MANGO:

2 Q. Okay. So you had a conversation with Defendant
3 Kamholz about the pilot light?

4 A. Yes, I did.

5 Q. Okay. What year, approximately, do you
6 remember this conversation happening?

7 A. Probably around '94. Someplace around there.

8 Q. What did -- did Defendant Kamholz tell you
9 about the pilot light during this conversation?

10 A. That it was shut off.

11 Q. Okay. Did you ask him anything?

12 A. I asked him why it was shut down.

13 Q. And did he respond?

14 A. Yes, he did.

15 Q. And what did he say?

16 A. Natural gas was too expensive.

17 Q. In response to that, did you ask him how you
18 were supposed to light this structure?

19 A. Yes, I did.

20 Q. And what did he say?

21 A. Light a broom and throw it up there.

22 Q. Between 1994 and 2008 or '9 you mentioned --

23 A. Yes.

24 Q. -- did you have to light a broom and throw it
25 up there?

1 A. Yes, we did.

2 Q. Is the pilot light back in?

3 A. Yes, it is.

4 Q. And why was the pilot light put back in?

5 A. We got an NOV from the state because it wasn't
6 hooked up.

7 Q. NOV is what?

8 A. Notice of violation.

9 Q. Okay. When did that notice of violation
10 happen?

11 A. I want to say 2008, 2009. Someplace around
12 there.

13 Q. Okay. Were you working when that notice of
14 violation occurred?

15 A. Yes, I -- Mark and I were both in the plant at
16 that time.

17 Q. Okay. And how did the notice of -- how did
18 this get detected, if you can tell the jury?

19 A. Mr. Sitzman from the -- from the DEC came in
20 that evening -- or that night, it was a midnight
21 shift -- to monitor the pushing. And when he went
22 upstairs, he noticed that the pilot light wasn't --
23 wasn't there. And then he went down and talked to
24 Mark about it, and I went about my business.

25 When Mr. Sitzman left, Mark was nice enough to

1 give me a ride out to -- to the locker room that --
2 that morning, and he mentioned that we got a NOV
3 for no pilot light.

4 Q. Okay. All right. So, what happens to the
5 contents of the oven after the coal has cooked the
6 amount of time it's supposed to cook?

7 A. It's pushed out.

8 Q. And in this photograph you see the pusher
9 machine there?

10 A. Yes. It's tough to see, but I can see it.

11 Q. Okay. So what happens now on the other side of
12 the battery?

13 A. The backdoor machine will pull the door in the
14 same manner as -- as the pusher side. And then he
15 goes down with what we call a rack, and he racks it
16 in the oven, which aligns the -- or aligns the oven
17 over to the bench, so the coke can hit the hot car.

18 MR. MANGO: Your Honor, at this point the
19 government would ask to pull up Government
20 Exhibit 130.01, and absent an objection, move that
21 into evidence.

22 THE COURT: 130.01?

23 MR. MANGO: Yes, your Honor.

24 MR. LINSIN: No objection, your Honor.

25 MR. PERSONIUS: No objection, your Honor.

1 THE COURT: Okay. Received. No
2 objection. May be published.

3 (Government's Exhibit 130.10 was received
4 into evidence.)

5 MR. MANGO: Thank you, your Honor.

6 BY MR. MANGO:

7 Q. Mr. Brossack, can you tell the jury what we're
8 looking at in this photograph?

9 A. That's the -- the coke running through the coke
10 guide going into the hot car.

11 Q. What is this structure there -- or the vehicle?

12 A. That's the quench loco.

13 Q. And what is -- what do you see happening in
14 this photograph?

15 A. Right now the -- the operator's catching a load
16 of coke to take to the quench station.

17 Q. And how long -- how long does it take for this
18 process to -- to finish?

19 A. Three or four minutes. Not more than that.

20 MR. MANGO: Your Honor, if we could pull
21 up Government Exhibit 130.11 for identification
22 purposes, and absent an objection, move that into
23 evidence.

24 THE COURT: 130.11?

25 MR. MANGO: Yes, your Honor.

1 MR. LINSIN: No objection, your Honor.

2 MR. PERSONIUS: No objection, Judge.

3 THE COURT: No objection. Received. May
4 be published.

5 (Government's Exhibit 130.11 was received
6 into evidence.)

7 BY MR. MANGO:

8 Q. Mr. Brossack, what -- what is this that we're
9 looking at here? If you can tell the jury.

10 A. That's the -- that's the coke falling out of
11 the coke guide, and this is the -- this is the hot
12 car catching the -- the hot coke.

13 THE COURT: All right. Excuse me one
14 second. Okay. Thank you.

15 MR. MANGO: And if we can also just pull
16 up Exhibit 130.12 for identification purposes, and
17 absent an objection, move that into evidence.

18 MR. LINSIN: No objection, your Honor.

19 MR. PERSONIUS: No objection, Judge.

20 THE COURT: Okay. 130.12 received. No
21 objection. May be published.

22 (Government's Exhibit 130.12 was received
23 into evidence.)

24 BY MR. MANGO:

25 Q. Mr. Brossack, do you see this photograph on

1 your screen?

2 A. Yes, I do.

3 Q. What is this structure here?

4 A. That's the coke guide.

5 Q. Okay. So that's the coke guide. Is there a
6 machine that puts that on?

7 A. The backdoor machine.

8 Q. All right.

9 A. It's hooked right to the backdoor machine.

10 Q. All right. So the backdoor machines comes on,
11 takes the door off?

12 A. Yes, sir.

13 Q. And then puts that guide on.

14 A. Moves down -- moves down so he can, what we
15 call rack into the oven. The rack locks into the
16 buckstays, and then the oven can be pushed.

17 Q. What happens -- what happens to the oven after
18 all of the coke is pushed out of it?

19 A. It's taken down to the quench station.

20 Q. The coke is?

21 A. Yeah.

22 Q. What happens to the oven?

23 A. The oven -- then the operators on each side
24 clean up the drag. The doors are put back on the
25 oven and the oven is charged.

1 Q. Okay. So you mentioned some worker cleans up
2 the drag?

3 A. Yes.

4 MR. MANGO: Your Honor, if the government
5 could pull up please Government Exhibit 130.05 for
6 identification purposes.

7 THE COURT: 130.05?

8 MR. MANGO: Yes. And absent an objection,
9 move that into evidence.

10 MR. LINSIN: No objection, your Honor.

11 MR. PERSONIUS: No objection, your Honor.

12 THE COURT: Okay. Received. No
13 objection. May be published.

14 (Government's Exhibit 130.05 was received
15 into evidence.)

16 BY MR. MANGO:

17 Q. Mr. Brossack, can you tell the jury what we're
18 looking at here?

19 A. That's the backdoor operator. He's pulling the
20 drag down off the sill. When he gets it down on
21 the bench, he'll clean that up and then put the
22 door back on the oven.

23 Q. Okay. And that's the inside of the oven we're
24 looking at?

25 A. Yes, it is.

1 Q. And it's empty now?

2 A. Yes, it is.

3 Q. Do you know what the temperature is, the
4 operating temperature inside of a coke oven?

5 A. It depends on what you're production and coking
6 time is.

7 Q. Okay. Can you give the jury a range of what
8 temperatures you've seen at the Tonawanda Coke --

9 A. I've seen from about 1850 up to 2070, 2090.

10 Q. Is that degrees Fahrenheit?

11 A. Yes.

12 MR. MANGO: Your Honor, if the government
13 could pull up, please, Government Exhibit 130.06
14 for identification purposes, and absent an
15 objection, move that into evidence.

16 THE COURT: 130.06.

17 MR. LINSIN: No objection, your Honor.

18 MR. PERSONIUS: No objection, Judge. I'm
19 sorry.

20 THE COURT: Okay. Received. No
21 objection. May be published.

22 (Government's Exhibit 130.06 was received
23 into evidence.)

24 BY MR. MANGO:

25 Q. All right. Mr. Brossack, can you tell the jury

1 what -- what this picture depicts?

2 A. That's a -- excuse me. That's a hot load in a
3 hot car heading toward the quench station.

4 Q. Okay. How many -- how many ovens fit in this
5 one car?

6 A. Just one.

7 Q. Okay. So this -- what we're seeing, the
8 glowing -- glowing material here, that's the coke?

9 A. That's the coke.

10 Q. And it's the contents from one oven?

11 A. From one oven.

12 MR. MANGO: Your Honor, the government
13 would ask to pull up Government Exhibit 130.08 for
14 identification purposes, and absent an objection,
15 move that into evidence.

16 THE COURT: Okay. 130.08.

17 MR. LINSIN: No objection, your Honor.

18 MR. PERSONIUS: No objection, Judge.

19 THE COURT: Received. No objection. May
20 be published.

21 (Government's Exhibit 130.08 was received
22 into evidence.)

23 BY MR. MANGO:

24 Q. Okay. Can you tell the jury what we're looking
25 at here?

1 A. That, again, is a full load of -- of hot coke
2 after the ovens have been pushed.

3 Q. Okay. Looking more towards the top?

4 A. Looking -- I'm sorry?

5 Q. Looking more towards the top compared to the
6 photo we just saw?

7 A. Yeah. This would be the other side of the car.

8 Q. So where is this, the hot coke, taken after it
9 comes out of the oven?

10 A. Down to the quench station.

11 MR. MANGO: Your Honor, the government
12 would ask to pull up already admitted Exhibit 49.15
13 into evidence, and ask that be published.

14 BY MR. MANGO:

15 Q. You mentioned the coke goes to a quench?

16 A. Quench station.

17 Q. Quench station?

18 A. Yes.

19 Q. Okay. What is this here?

20 A. That's number 2 quench.

21 Q. Okay. Number 2 quench would be on which
22 side --

23 A. The east.

24 Q. The east?

25 A. The east.

1 Q. And is this a quench happening?

2 A. Yes, it is.

3 Q. And during the quenching process, can you tell
4 the jury how -- how long that takes?

5 A. You have a quenching cycle of right now one
6 minute, and then a drainage cycle of, I believe, 45
7 seconds and then another quench of 45 seconds. And
8 then it sits in there and drains for about three
9 minutes before you take it out and put it on the
10 wharf.

11 MR. MANGO: The government would ask to
12 pull up Government Exhibit 49.14 for identification
13 purposes, and absent an objection, move that into
14 evidence.

15 THE COURT: 49.14.

16 MR. LINSIN: No objection, your Honor.

17 MR. PERSONIUS: No objection, Judge.

18 THE COURT: Okay. Received. No
19 objection. May be published.

20 (Government's Exhibit 49.14 was received
21 into evidence.)

22 BY MR. MANGO:

23 Q. Mr. Brossack, what does this picture depict
24 here?

25 A. That's number 2 quench station from a different

1 angle.

2 Q. Okay. Quench is happening?

3 A. Yes, it is.

4 Q. Now, how many quench towers are there at the
5 Tonawanda Coke facility?

6 A. There is a number 1 and number 2 quench
7 stations. There is two of them.

8 Q. There is two?

9 A. Yes.

10 Q. Okay. Are they in -- connected by the same
11 rail?

12 A. Yes, they are.

13 MR. MANGO: Your Honor, the government
14 would ask to pull up Government Exhibit 115.11 for
15 identification purposes, and absent an objection,
16 move this into evidence.

17 THE COURT: 115.11?

18 MR. MANGO: Yes, your Honor.

19 MR. LINSIN: No objection, your Honor.

20 MR. PERSONIUS: No objection, Judge.

21 THE COURT: All right. Received. No
22 objection. May be published.

23 (Government's Exhibit 115.11 was received
24 into evidence.)

25 BY MR. MANGO:

1 Q. Mr. Brossack, what -- can you tell the jury
2 what we're looking at here?

3 A. That looks like the inside of number 2 quench
4 station. The hot car is right here, and then
5 number 1 quench station is down here at the other
6 end of the tracks.

7 Q. Okay. And what is -- what are some of these
8 structures?

9 A. That would be coke handling, what you circled.
10 On the right-hand side here -- I'm sorry -- would
11 be the battery.

12 Q. Okay. Quenches at number 1 quench, do they
13 take the same amount of time as you just went
14 through for the jury at number 2 quench?

15 A. Yes, they do.

16 MR. MANGO: If we could pull up for
17 identification purposes, please, your Honor,
18 Government Exhibit 115.24 for identification, and
19 absent an objection, move that into evidence.

20 THE COURT: 115.24.

21 MR. LINSIN: No objection, your Honor.

22 MR. PERSONIUS: No objection, Judge.

23 THE COURT: Okay. Received. No
24 objection. May be published.

25 (Government's Exhibit 115.24 was received

1 into evidence.)

2 MR. MANGO: Thank you, your Honor.

3 BY MR. MANGO:

4 Q. Mr. Brossack, could you tell the jury what
5 we're looking at here?

6 A. That's number one quench station.

7 Q. And what's -- what location -- where is this
8 located?

9 A. That's west. That's the west station.

10 Q. On the west. So where is the coke then taken
11 after it's quenched?

12 A. It's taken down and dumped on the wharf.

13 Q. The wharf. What do you mean -- can you tell
14 the jury what you mean by the wharf? What happens
15 at the wharf?

16 A. The coke is dumped on the wharf. It's a
17 sloping structure, and there's gates down there
18 that are manually pulled. The coke slides down on
19 to a belt and then is run up into the coke handling
20 building for sizing.

21 MR. MANGO: If we could pull up Government
22 Exhibit 130.09, your Honor, for identification
23 purposes, and absent an objection, move that into
24 evidence.

25 MR. LINSIN: No objection, your Honor.

1 MR. PERSONIUS: No objection, your Honor.

2 THE COURT: Okay. One second, please.

3 130.09?

4 MR. MANGO: Yes, your Honor.

5 THE COURT: Yes. No objection. Received.

6 May be published.

7 (Government's Exhibit 130.09 was received
8 into evidence.)

9 BY MR. MANGO:

10 Q. Mr. Brossack, can you tell the jury what this
11 picture is?

12 A. That's C boom in coke handling.

13 Q. Excuse me?

14 A. C boom in coke handling. That's where -- this
15 is -- this is where the coke comes out after being
16 sized.

17 Q. Okay.

18 A. There is a series of belts that it runs through
19 and a series of booms it comes off depending on
20 what the size is.

21 Q. All right. So what -- what happens then to the
22 finished product?

23 A. It's either shipped out by truck or sometimes
24 by rail, depending what the customer wants.

25 MR. MANGO: Okay. Your Honor, if we could

1 pull up Government Exhibit 115.23 for
2 identification purposes, and absent an objection,
3 move that into evidence.

4 THE COURT: 115.23.

5 MR. LINSIN: No objection, your Honor.

6 MR. PERSONIUS: No objection, Judge.

7 THE COURT: Okay. Received. No
8 objection. May be publish.

9 (Government's Exhibit 115.23 was received
10 into evidence.)

11 MR. MANGO: Thank you, your Honor.

12 BY MR. MANGO:

13 Q. Mr. Brossack, what are we looking at here in
14 115.23?

15 A. That's the front of coke handling.

16 Q. Okay. Is this where -- I see a truck there.
17 Is that where -- what would happen at that
18 location?

19 A. Right here?

20 Q. Yes.

21 A. That would be -- those trucks would be in the
22 process of being loaded.

23 Q. With what?

24 A. With coke.

25 Q. Okay. And then that's how the coke -- in one

1 instance you mentioned that's how the coke leaves
2 the facility?

3 A. Yes.

4 Q. This structure here going up, what is that?

5 A. A incline.

6 Q. Okay. Does stuff go up or does stuff come down
7 that?

8 A. The stuff goes up.

9 Q. All right. What goes up that incline?

10 A. The coke. Sorry. The coke.

11 Q. All right.

12 A. Off the wharf. That comes off the -- this --
13 this -- this incline runs off of A wharf.

14 Q. And what happens up here then?

15 A. It runs down on to B belt, and then there is a
16 series of belts. It drops on to -- on to shakers.
17 We call them double deckers. And there's screens
18 on there that screen out the coke to various sizes.
19 And then they're run off of these booms -- well,
20 you can't really see them all that well, but
21 they're run off the booms from their perspective
22 size. Depending on what track is depending on what
23 size comes off of -- of that belt.

24 Q. Is there another incline on this side over
25 there?

1 A. Yeah, that's -- that's D incline.

2 Q. All right. Another way to get coke up to the
3 coke handling?

4 A. That runs off of D Wharf, yeah.

5 Q. Are you familiar with the term "breeze"?

6 A. Yes.

7 Q. Why don't you tell the jury what "breeze" is?

8 A. It's -- it's the coke fines. It's oh, maybe
9 the consistency of sand. It's the fines that
10 are -- that are off the coke that either is
11 screened out or when we dig the sumps, which are on
12 the -- on the quench stations -- and, you know,
13 wash off the coke in the quench process, and we --
14 we clean them out and put over in the coal field in
15 the raw breeze pile.

16 MR. MANGO: Your Honor, if we could pull
17 up Government Exhibit 115.42 for identification
18 purposes, and absent an objection, move that into
19 evidence.

20 THE COURT: 115.42.

21 MR. LINSIN: No objection, your Honor.

22 MR. PERSONIUS: No objection, Judge.

23 THE COURT: Okay. Received. No
24 objection. May be published.

25 (Government's Exhibit 115.42 was received

1 into evidence.)

2 MR. MANGO: Thank you, your Honor.

3 BY MR. MANGO:

4 Q. Mr. Brossack, can you tell the jury what we're
5 looking at here?

6 A. That's a pile of raw breeze.

7 Q. Raw breeze, all right. And you mentioned where
8 the breeze comes from. What -- what is raw breeze
9 used for?

10 A. As it stands right there, nothing. It's --
11 it's -- before we use it in our process, we have to
12 crush it.

13 Q. Okay. So is there a machine that you use to
14 crush it?

15 A. Yes.

16 Q. Is that all that happens, it just gets crushed?

17 A. Yes.

18 Q. And is it called something else after you crush
19 it?

20 A. Finished breeze.

21 Q. All right. Is there a separate pile it's taken
22 to?

23 A. Yes, there is.

24 MR. MANGO: Let me show you Government
25 Exhibit 115.43 for identification purposes, and

1 absent an objection, move that into evidence.

2 THE COURT: Okay. 115.43.

3 MR. LINSIN: No objection, your Honor.

4 MR. PERSONIUS: No objection, Judge.

5 THE COURT: Okay. Received. No

6 objection. May be published.

7 (Government's Exhibit 115.43 was received
8 into evidence.)

9 BY MR. MANGO:

10 Q. Mr. Brossack, can you tell the jury what --
11 what this depicts?

12 A. That would be the finished breeze pile.

13 Q. And then how do you -- can you tell the jury in
14 what process or how do you use the finished breeze
15 product?

16 A. It's part of the mix that goes up to the coal
17 handling building.

18 Q. So that's that big table --

19 A. Yes.

20 Q. -- that you mentioned?

21 A. Yes.

22 Q. Okay. Have you ever heard the expression
23 "beehive"?

24 A. Yes, I have.

25 Q. Can you tell the jury what does -- what does it

1 mean when you use the term "beehive"?

2 A. When we have to open the flare stack when we
3 lose the exhausters, we call it beehiving.

4 Q. Okay. So the circumstances by which you would
5 go into a beehive that would be -- you mentioned if
6 the exhausters went down?

7 A. Yes.

8 Q. Any other circumstances that would cause a
9 beehive to occur?

10 A. If you had a power failure, which,
11 consequently, after you lose your steam, would --
12 would shut the exhauster down.

13 Q. So if the exhauster itself breaks down or if
14 you lose your power?

15 A. If you lose power, yes.

16 Q. Okay. What happens to the coke oven gas when
17 you're in a beehive situation?

18 A. It runs out the flare stack.

19 Q. Did you ever have a conversation with Defendant
20 Kamholz regarding beehiving?

21 A. A while ago, yes, I did.

22 Q. Okay. Can you tell the jury when that
23 happened?

24 A. I think it was around '98, 1998.

25 Q. And what were the circumstances that gave rise

1 to your conversation about beehiving with Defendant
2 Kamholz?

3 A. I had to beehive the battery. We lost the
4 exhauster.

5 Q. How long did the beehive last on that occasion?

6 A. I think before we got it back was probably
7 maybe 45 minutes or an hour. They had a problem
8 over there.

9 Q. Okay. Forty-five minutes or an hour?

10 A. Something like that, if I remember right, yes.

11 Q. And how did you come about having a
12 conversation with Defendant Kamholz?

13 A. Mark came up to the battery after it was over.

14 Q. And what did he ask you?

15 A. He said how long was the -- was the beehive.
16 Or how long did you lose the exhauster. And I told
17 him, I don't know, about 45 minutes to an hour.

18 Q. Did he say anything at that point?

19 A. He said he never had an exhauster failure or
20 have to beehive the oven for more than ten minutes.

21 Q. Okay. I'm sorry. Explain that again for the
22 jury. What -- what did he tell you?

23 A. He told us we never had -- or told me, I'm
24 sorry, not us. He told me that you never have an
25 exhauster failure for over ten minutes.

1 Q. Okay. After hearing that, did you say anything
2 to him?

3 A. I asked him what's the big deal, you know, but
4 apparently something about some report. I -- I
5 don't know.

6 MR. PERSONIUS: Your Honor, the question
7 was what did Mr. Kamholz say, not apparently
8 something. Could we have what Mr. Kamholz said?

9 THE COURT: All right. I mean, he said
10 what he said. That answer will stand. But
11 follow-up on it, so we can see if there's any more
12 specificity to it.

13 MR. MANGO: Yes, your Honor.

14 BY MR. MANGO:

15 Q. Defendant Kamholz mentioned to you it never
16 happens longer than ten minutes?

17 A. Yes, sir.

18 Q. And what did you say in response to that?

19 A. That -- I just -- if I remember right, I just
20 asked him what was the big deal. I didn't know why
21 it was no longer than ten minutes.

22 Q. Okay. Did he tell you why to report it for
23 only ten minutes?

24 MR. PERSONIUS: Your honor, object to the
25 leading. He didn't -- the witness didn't testify

1 that Mr. Kamholz told him to report it as --
2 there's been no evidence of that. I ask that that
3 question be stricken.

4 THE COURT: No. But reput the question.

5 MR. MANGO: Yes, your Honor.

6 BY MR. MANGO:

7 Q. During your conversation with Defendant
8 Kamholz, did he tell you how to report this beehive
9 situation?

10 A. Yes. That a beehive was no longer than ten
11 minutes.

12 Q. Okay. So did he tell you to report it -- how
13 long did he tell you to report it for?

14 A. To be honest with you, I don't think I put it
15 in my report. It was just -- he just mentioned to
16 me that a beehive was no longer than ten minutes.

17 Q. Did you tell him -- how -- again, how long did
18 you tell him the beehive actually happened?

19 A. I believe I told him it was 45 minutes or an
20 hour that the exhauster was down.

21 MR. PERSONIUS: Your honor, I renew my
22 request in light of that testimony.

23 THE COURT: To do what?

24 MR. PERSONIUS: To strike Mr. Mango
25 characterizing the conversation that Mr. Kamholz

1 said anything about how long to report this
2 incident for. The witness has said that the only
3 thing Mr. Kamholz said was that beehives don't last
4 more than ten minutes.

5 THE COURT: All right. The jury's heard
6 the testimony, the answers given by Mr. Brossack,
7 and you can cross-examine. The answers will stand.

8 BY MR. MANGO:

9 Q. Did Defendant Kamholz tell you why beehives
10 only last ten minutes?

11 A. That he didn't have to put a report in.

12 Q. He told you that?

13 A. Yes.

14 Q. Okay. What's your understanding of the
15 requirements if a beehive lasts longer than ten
16 minutes?

17 MR. PERSONIUS: Well, your Honor, if the
18 witness has an understanding, could we have a
19 foundation for the witness's understanding so it's
20 not just a guess or speculation.

21 MR. MANGO: Your Honor, he's the battery
22 foreman. I think his position itself -- I can
23 rephrase those questions.

24 THE COURT: Go ahead, please.

25 BY MR. MANGO:

1 Q. In your position as battery foreman, do you
2 have responsibilities over the battery during times
3 of a beehive?

4 A. Yes.

5 Q. Okay. During times of a beehive, are you
6 instructed to do anything during a beehive?

7 A. I don't quite understand your question. I'm
8 sorry.

9 Q. Do you have to make note of a beehive anywhere
10 in any of your --

11 A. In the general foreman's report, yes.

12 Q. Okay. So describe for the jury what the
13 general foreman's report is.

14 A. It's just a shift-by-shift log of what happened
15 on that particular shift, your -- your readings,
16 any breakdowns, people calling off and using --
17 using replacement people. Just -- just so that the
18 superintendent knew what happened on your shift.

19 Q. Okay. And as part of your duties, you're
20 required to -- to list in that report whether a
21 beehive happened?

22 A. I don't know if I'm required, but I -- when I
23 did have a beehive I did -- I did put it -- put it
24 on my GF report, yes.

25 Q. Okay. So when Defendant Kamholz tells you

1 beehives never last longer than ten minutes, what's
2 your understanding of what he's telling you?

3 A. I really don't -- I got -- I got to be honest
4 with you, I don't know. I never really thought it.
5 The man made a statement, and I --

6 Q. Well, was the statement accurate?

7 A. To my knowledge, no.

8 Q. And, now, based on your position as battery
9 foreman, your experience, your -- your use of
10 filling out this -- this report, what is your
11 understanding if a beehive lasts longer than ten
12 minutes? What has to be done?

13 MR. PERSONIUS: Your Honor, again --

14 MR. LINSIN: Objection. Asked and
15 answered.

16 THE COURT: Yeah, well, it's a lot of
17 things, but to the form of the question I'll
18 sustain the objection.

19 BY MR. MANGO:

20 Q. That general foreman report, have you ever seen
21 it made available to inspectors if they ever show
22 up at the Tonawanda Coke facility?

23 A. No, I haven't really.

24 Q. What is your understanding as to why Defendant
25 Kamholz would tell you beehives last only ten

1 minutes?

2 MR. PERSONIUS: He's already testified he
3 doesn't know.

4 THE COURT: Yeah, asked and answered.
5 Sustained.

6 BY MR. MANGO:

7 Q. Let's talk about the coke oven gas. When it's
8 pulled off of the ovens by the -- by the
9 exhausters, what happens to it at that point?

10 A. It's sent to the by-products.

11 Q. And are you -- how familiar, if you can tell
12 the jury, are you with the by-products department?

13 A. Not really all that much. I didn't spend a lot
14 of time over there. Didn't really care for the
15 department.

16 Q. Okay. And do you have a limited knowledge of
17 the by-products?

18 A. Yes, sir.

19 Q. In your limited knowledge, what are some of the
20 by-products that are taken out of the coke oven
21 gas?

22 A. Well, you -- you draw off tar, ammonia. We
23 used to process light oil, benzene, naphthalene.

24 Q. Okay. You mentioned tar.

25 A. Yes, I did.

1 Q. In the process of taking the tar out, is
2 something else created?

3 A. You get -- I suppose you call it a sludge in
4 the tar box, yes.

5 Q. Okay. You mentioned tar box.

6 A. Yes.

7 Q. What is -- if you can tell the jury what the
8 tar box is.

9 A. That's where -- where the -- after the tar goes
10 through a process of being refined, I guess you
11 call it, that's really not used, it's dropped down
12 into what we call the tar box.

13 MR. MANGO: Your Honor, the government
14 would ask to pull up Government Exhibit 3.11 for
15 identification purposes, and absent an objection,
16 move that into evidence.

17 MR. LINSIN: No objection, your Honor.

18 MR. PERSONIUS: No objection, Judge.

19 THE COURT: Okay. 3.11 received. No
20 objection. May be published.

21 (Government's Exhibit 3.11 was received
22 into evidence.)

23 MR. MANGO: Thank you, your Honor.

24 BY MR. MANGO:

25 Q. Mr. Brossack, can you tell the jury what this

1 picture depicts here?

2 A. That's the tar box I was speaking of.

3 Q. Okay. And this is where this sludge you
4 mentioned --

5 A. Drops in, yes.

6 Q. -- drops in. How often does this tar box have
7 to get cleaned out?

8 A. Depends on production. At a higher production,
9 maybe once a day. Medium production, two, three
10 times a week. And at a very low production, one,
11 maybe twice a week.

12 Q. Okay. How does the -- the tar box actually get
13 cleaned out? You mentioned it needs to get cleaned
14 out.

15 A. An end loader puts his bucket right in there
16 and scoops the tar out of there, or the sludge.

17 Q. Okay. An end loader is -- is what? If you can
18 just --

19 A. It's -- it's a bucket tractor, a large bucket
20 tractor is the best way I can describe it to you.

21 Q. Okay. And the -- and the piece that's on the
22 front of this end loader --

23 A. Is the bucket.

24 Q. -- you're calling it the bucket?

25 A. Yes.

1 Q. Okay. So the end loader comes over, puts the
2 bucket in this box?

3 A. Yeah.

4 Q. And scoops the material up?

5 A. Yes.

6 Q. Okay. Do you recall the criminal search
7 warrant that was executed at the Tonawanda Coke
8 Corporation?

9 A. Yes, I do.

10 Q. All right. Can you tell the jury when that --
11 when that happened?

12 A. It was December 2009, I believe.

13 Q. And prior to the search warrant, where was the
14 sludge taken, if anywhere, after being scooped out
15 of this tar box?

16 A. Out to the coal field.

17 Q. Out to the coal field?

18 A. Yes.

19 Q. And did you see this happen?

20 A. When I was in coal handling, I saw it -- I saw
21 it come out to the field, yes.

22 Q. And what happened once it went out to the
23 field?

24 A. If there was room on the -- on the concrete
25 pad, it went there. If there wasn't, it was mixed

1 into one of the coal piles so I could take it up to
2 the building and regenerate it.

3 Q. All right. So you mentioned a concrete pad.

4 A. Yes.

5 Q. Can you tell the jury where this concrete pad
6 is located?

7 A. It's down at the end of where I pointed out
8 seven belt, and it's a -- kind of almost looks like
9 a foundation of a house. Excuse me. That's where
10 the tar is -- is stored. It's just a storage pad.

11 THE COURT: All right. This is relevant
12 to Counts 17 through 19?

13 MR. MANGO: Yes, your Honor.

14 THE COURT: All right. Remember, ladies
15 and gentlemen, the counts are broken down 1 through
16 15, and then there's the obstruction of justice
17 charge, and then 17 through 19 are the RCRA counts,
18 and that's what this line of questioning is
19 relating to.

20 Yes, Mr. Linsin?

21 MR. LINSIN: Your Honor, just a point of
22 clarification. I believe the testimony regarding
23 the coal tar sludge from the decanter tank relates
24 to Count 19. And 17 and 18, actually, as I recall,
25 relate to the -- the Barrett tanks or the storage

1 tanks and not this material.

2 THE COURT: Okay. But we're talking about
3 placement of sludge, so that's more refined and
4 it's specific. Okay.

5 So this is Count 19 and I take it there's no
6 objection to that instruction?

7 MR. MANGO: No, your Honor.

8 THE COURT: Okay. Thank you. And then we
9 still have to deal with the tanks and the condition
10 of the tanks at another point. Thank you.

11 Mr. Personius, we're okay in that regard?

12 MR. PERSONIUS: Yeah, your Honor.

13 THE COURT: Okay. Why don't we do this.
14 Let's take 15 minutes, all right?

15 MR. MANGO: Thank you, your Honor.

16 (Jury excused from the courtroom.)

17 THE COURT: Okay. Mr. Brossack, you can
18 step down. Thank you.

19 (Short recess was taken.)

20 (Jury seated.)

21 THE COURT: Where's the spring in your
22 step? This is Monday, ladies and gentlemen.
23 Welcome back. Please have a seat.

24 Okay. The attorneys and parties are back,
25 present. Mr. Anthony Brossack is back on the

1 stand. He remains under oath. Looks like

2 Mr. Mango still has a few questions.

3 If you want to start, Mr. Mango, we're ready.

4 MR. MANGO: Yes, your Honor. Thank you.

5 BY MR. MANGO:

6 Q. Mr. Brossack, you mentioned -- I asked you what
7 happened to the sludge, if it was taken anywhere
8 prior to the search warrant after being scooped out
9 of that tar box, right?

10 A. Yes.

11 Q. Okay. And, again, can you tell the jury where
12 it would go?

13 A. When it was taken out of the tar box, it was
14 taken out to the coal field.

15 Q. Okay. And what would happen to the material
16 once it was brought out to the coal field?

17 A. It was either put into the tar storage pen or
18 if there was no room, it was put in a coal pile and
19 mixed up and tried to be used in a mix that day.

20 Q. And the tar storage bin, is that also called
21 the concrete pad?

22 A. Yes.

23 Q. All right. That's where we left off.

24 A. Yes.

25 Q. I was trying to reorient us here. Let me show

1 you what's in evidence as Government's Exhibit
2 105.42. And if we can focus on that section,
3 please?

4 Okay. Could you put a -- do you see this
5 concrete pad?

6 A. Right here.

7 Q. Okay. So, again, now with reference to this
8 photograph, can you tell the jury what would happen
9 to the material after it left the tar storage box?

10 A. Like I said before, if there was room, it went
11 in there. If not, it usually went on the -- on the
12 low vol side down on the south here --

13 Q. Okay.

14 A. -- one of the coal piles.

15 Q. So are you familiar with the -- this concrete
16 pad in the coal field?

17 A. Yes.

18 Q. Can you describe it for the jury?

19 A. Like a big foundation to a home, except there
20 was one cutout I believe at the east side of it
21 that you can go in with an end loader and either
22 dump something or pick it up or take it up.

23 THE COURT: Let's enlarge the pad, please.

24 BY MR. MANGO:

25 Q. Okay. So that's the pad. I'd actually like to

1 also show you Government Exhibit 3.01 for
2 identification purposes, and absent an objection,
3 offer that into evidence, your Honor.

4 THE COURT: Okay. 3.01.

5 MR. LINSIN: No objection, your Honor.

6 MR. PERSONIUS: No objection, Judge.

7 THE COURT: Okay. Received and may be
8 published.

9 (Government's Exhibit 3.01 was received
10 into evidence.)

11 BY MR. MANGO:

12 Q. Okay. Could you tell the jury what we're
13 looking at here, Mr. Brossack?

14 A. That would be the -- the concrete pad.

15 Q. Okay. And if you can tell the jury, based on
16 your work in the coal handling department, what was
17 this pad used for?

18 A. Tar storage and sometimes they would -- we'd
19 take coal in and mix it up on -- in the pad to take
20 it up to the building for regeneration.

21 Q. Okay. Can you tell the jury and describe how
22 the coal and the sludge were mixed on this pad?

23 A. Usually an end loader took the coal in and put
24 it in there, and then picked up some tar to put it
25 in. And then they back drag it, what we call back

1 drag it, to try and mix it up. Pick it up again,
2 back drag it -- I don't know -- four, five, ten
3 times. However many it took to get where it would
4 go down to the point where we could take it up to
5 the buildings without too much problems.

6 Q. Okay. Where would that mixture -- that would
7 happen on the pad?

8 A. Yes.

9 Q. Where would that mixture go after that?

10 A. When I was up there, it would go back out to a
11 coal pile and be put in the coal pile.

12 Q. And those coal piles are out in the coal field?

13 A. Yes.

14 Q. How long would the mixture stay on the ground
15 before it was used?

16 A. Depending on how much of it I took up that day,
17 it could be any place from a couple hours to
18 overnight until I started the building the next
19 day.

20 Q. Okay. In fact, did there ever come a time when
21 you were informed that something had been on the
22 ground overnight?

23 A. Yes.

24 MR. PERSONIUS: Your Honor, this term
25 "ground" I object to the use of that term "ground."

1 The witness testified it was on the coal pile. And
2 this gets into an important part of this case,
3 without me saying more.

4 THE COURT: Well, Mr. Linsin, you want to
5 add to that?

6 MR. LINSIN: The concern I had about the
7 witness being informed about something, your Honor,
8 I have no idea where that information comes from.
9 If he had observations, I would share in
10 Mr. Personius's objection.

11 THE COURT: Well, okay. If he was
12 informed, the answer is yes or no. And then the
13 follow-up should be who did the informing or where
14 did it come from.

15 As far as the ground is concerned, the ground
16 is the ground, and that's the question. The pad
17 might be the ground, is that what you're going to
18 tell me? No?

19 MR. LINSIN: No, your Honor. The -- the
20 issue in the coal pile is -- the roadways in the
21 coal field are not ground. They consist of coal.

22 MR. MANGO: Objection, your Honor. This
23 is argument. I don't know if we want to enter into
24 this argument now. I'd ask that we reserve this
25 for another time.

1 THE COURT: Well, it has been an issue in
2 terms of what is the ground, what is the pad, what
3 is the area.

4 Better identify it. Describe, as best you can,
5 in the witness's description, what the area of
6 location is actually to him, and then we'll go from
7 there.

8 MR. PERSONIUS: Thank you, your Honor.

9 THE COURT: So you have to be a little bit
10 careful in terms of your questioning here, I think,
11 Mr. Mango. Because we know that from -- well, I
12 think the openings as well as the discussions that
13 the attorneys have had that this is a term of art
14 that we have to work on.

15 So, I guess the objections are sustained to
16 more specifics in your questioning, please.

17 MR. MANGO: Yes, your Honor.

18 If we could please go back to Exhibit 105.42 in
19 evidence. And if we can focus on this area here,
20 please.

21 BY MR. MANGO:

22 Q. Okay. Mr. Brossack, you see the area
23 highlighted on the screen or pulled up on the
24 screen?

25 A. Yes, I do.

1 Q. Okay. Could you point to where the coal piles
2 are in this photograph?

3 A. Right here, here, looks to be here. This looks
4 like a little one here.

5 Q. Okay. Are the coal piles on top of anything?

6 A. Probably more coal.

7 Q. Okay.

8 MR. MANGO: Your Honor, if I may have a
9 moment.

10 THE COURT: Yes.

11 BY MR. MANGO:

12 Q. Mr. Brossack, you mentioned that there's
13 probably coal underneath the coal piles?

14 A. Yes.

15 Q. Okay. Why do you say that?

16 A. The coal -- the coal field has been there for
17 years. I'm sure they haven't scraped up all of it.
18 So there's probably a pretty good base of coal
19 there.

20 Q. Okay. Do you know if there is any type of
21 structures underneath the coal piles?

22 A. Structures?

23 Q. Yes.

24 A. No, I don't.

25 Q. Okay. And any type of concrete lining

1 underneath the coal field?

2 A. To my knowledge, no.

3 Q. Okay. So we were talking about the -- the
4 mixture that would be made on the concrete pad.

5 A. Yes.

6 Q. Okay. And again, where would that mixture go
7 after being made on the concrete pad?

8 A. I don't want to say to the ground.

9 Q. Well, no, say -- I want you to say what you
10 want to say.

11 A. It usually was put in -- in a coal pile on the
12 ground, you know.

13 Q. Okay. All right. How did you know that? Did
14 you see it happen?

15 A. At -- sometimes, no. Sometimes I would see it,
16 but other times, no, I wouldn't. It was mixed up
17 prior, like the -- the afternoon and night before I
18 came back in.

19 Q. Okay. So then you would come in, what, the
20 next morning?

21 A. The next morning.

22 Q. And would you make some observations when you
23 came in that next morning?

24 A. Just to how the building was running. And then
25 I was alerted that there was -- there was a mixture

1 out there for me to use that day.

2 Q. A mixture in the piles on the ground?

3 A. Yes.

4 MR. PERSONIUS: Your Honor, again, I
5 object to that.

6 MR. MANGO: Your Honor, that's his
7 testimony.

8 THE COURT: I'm going to allow it. But,
9 you know, ladies and gentlemen, the testimony of
10 the witness is the evidence, and that's why the
11 instruction to you is the questions are not the
12 evidence. All right. It's what the witness has
13 responded to the question. And you heard what
14 Mr. Brossack said, and you are to consider that as
15 the evidence.

16 I don't -- I don't think there was any
17 difficulty in -- that will result in my sustaining
18 the objection, but you can cross-examine with
19 respect to your concern about the ground, which is
20 I think encompassed in your objection, right?

21 MR. PERSONIUS: I will do that, Judge.

22 THE COURT: All right. If there's more to
23 it, let me know. Is there more?

24 MR. PERSONIUS: I don't want to do a
25 speaking objection, but the concern is this is a

1 very sensitive issue. We just had a discussion of
2 this no more than five minutes ago. The witness
3 gives a response, and then it is -- in my judgment,
4 was not properly characterized when it was repeated
5 by Mr. Mango. And this is a sensitive area and --

6 THE COURT: Well --

7 MR. PERSONIUS: That's the problem, Judge.
8 But I can cover it on cross.

9 THE COURT: You can cover it on
10 cross-examination. You know you have to be
11 sensitive to that. Like I said, I don't think
12 there was anything improper in what I heard.

13 So we'll move forward, please.

14 MR. MANGO: Thank you, your Honor.

15 If we could pull back up Government
16 Exhibit 3.01, which is now in evidence, please,
17 your Honor.

18 BY MR. MANGO:

19 Q. Okay. And Mr. Brossack, you testified this was
20 the concrete pad, right?

21 A. Yes.

22 Q. All right. And would you consider this
23 concrete pad full or empty?

24 A. It appears to be -- it appears to be fairly
25 full to me.

1 Q. Okay. So you mentioned before if there was
2 room on the pad, we would mix it on the pad.

3 A. Yes.

4 Q. Okay. If there was not room on the pad, where
5 would you take this tar sludge?

6 A. I wouldn't take it.

7 MR. PERSONIUS: Your Honor, I object.
8 This witness hasn't testified he ever took the coal
9 tar sludge anywhere. That has not been the
10 evidence.

11 THE COURT: Well, ask him if he did.

12 BY MR. MANGO:

13 Q. Did you see the tar sludge being taken out of
14 the tar box that we already talked about?

15 A. Yes.

16 Q. Okay. If it was not mixed -- where was it
17 taken?

18 A. To the coal field.

19 Q. Okay. And what happened at the coal field when
20 you saw it taken there?

21 A. If the -- if the concrete pad was full, it was
22 usually taken over to -- predominantly one of the
23 low -- low vol piles and put in a pile and mixed
24 up.

25 Q. Okay. How would that mixing happen? Describe

1 for the jury.

2 A. Again, the end loader would -- would pour it
3 into the pile, grab a bucket of coal, and then mix
4 it in by back dragging it, and keep picking it up,
5 dropping it, and back dragging it.

6 Q. In your -- in your employment in coal handling,
7 how long would that material then stay in the coal
8 piles?

9 A. It would depend on how much I used that day.

10 Q. Okay.

11 A. Like I said --

12 Q. Could you give the jury a range of how long it
13 could -- could stay in the pile?

14 A. It could be from a couple hours to the next run
15 the next day.

16 Q. Did anyone ever tell you that the coal tar
17 sludge should not be mixed on to the coal piles?

18 A. No, not that I can remember.

19 Q. Did anyone ever give you any type of training
20 regarding hazardous wastes?

21 A. No.

22 Q. When it rained, did the runoff from the coal
23 pile flow anywhere?

24 A. Into the coal field.

25 Q. Did you see where it went from the coal field?

1 A. No. I never took a particular notice to which
2 way it went.

3 Q. Okay. Did the -- now you just described this
4 process, you gave -- we talked about the criminal
5 search warrant.

6 A. Yes.

7 Q. After the criminal search warrant, did this
8 handling of the tar sludge, how it happened,
9 change?

10 A. Everything went on the pad and it was mixed on
11 the pad and taken from the pad directly to the
12 building.

13 Q. Okay. Okay. When you -- when you testified
14 earlier you stated that there was -- when you first
15 started on the battery, there was a pilot light --

16 A. Yes.

17 Q. -- for this flare stack?

18 A. Yes.

19 Q. And so then from 1994 to 2008 or '9 there was
20 no pilot light?

21 A. No, there wasn't.

22 Q. All right. And what is the purpose of the
23 pilot light, if you could tell the jury?

24 A. When you open the --

25 MR. LINSIN: Your Honor, these questions

1 have been asked and answered. Unless this is a new
2 subject, I do not see the need to repeat the same
3 testimony.

4 THE COURT: Yeah, this was gone into. So,
5 where are you going? Are you going somewhere else?

6 MR. MANGO: No, it's just I want to
7 clarify the purpose of the pilot light. I don't
8 think there was exact testimony on what the pilot
9 light itself actually does, and I think I just want
10 to clarify that briefly.

11 THE COURT: All right. I'll limit your
12 questions to just the purpose of the pilot light.

13 MR. MANGO: Yes, sir, thank you.

14 BY MR. MANGO:

15 Q. What is the purpose of the pilot light?

16 A. To light the gas that's being taken off the
17 oven -- or the battery, sorry.

18 Q. Okay. So the gas would then burn?

19 A. Yes. It would automatically light off as you
20 open the valve.

21 Q. All right. Thank you.

22 Are you familiar with two abandoned tar tanks
23 that were located in the coal field?

24 A. Yes, I am.

25 THE COURT: Okay. This is where we get to

1 Count 17 and 18. Mr. Linsin?

2 MR. LINSIN: Yes, your Honor.

3 THE COURT: Right?

4 MR. LINSIN: Yes, thank you, your Honor.

5 THE COURT: Mr. Mango?

6 MR. MANGO: That's correct.

7 THE COURT: Okay. Mr. Personius?

8 MR. PERSONIUS: Yes, Judge.

9 THE COURT: And again, remember the first
10 15 counts are the Clean Air Act. Counts 17, 18, 19
11 have to do with the RCRA statute, which is the
12 Resource Conservation and Recovery Act, RCRA.

13 Okay. And then that 16th count, if you
14 remember, is the obstruction of justice. So just
15 keep the focus there. This is what we're talking
16 about now, the RCRA portion of the indictment.
17 Count 17, 18, 19.

18 Go ahead, please.

19 MR. MANGO: Thank you, your Honor.

20 BY MR. MANGO:

21 Q. Mr. Brossack, at some point did you make an
22 observation about the area around these two tar
23 tanks in the coal field?

24 A. Yes, I did.

25 Q. Okay. Can you tell the jury when you made this

1 observation?

2 A. I think it was around '94, '95.

3 Q. Okay. And what was your observation that you
4 made of the area around these two tanks?

5 A. There was quite a large pool of tar between the
6 two tanks.

7 Q. Okay. You say "a large pool of tar." Can
8 you -- based on your observations, can you give the
9 jury an approximate size of this pool of tar?

10 A. Maybe about the size of a 24-foot above-ground
11 pool. About that size.

12 Q. Did you make an observation as to approximately
13 what the depth of this pool of tar was?

14 A. Maybe a foot, foot and a half.

15 MR. LINSIN: Objection. "Maybe", your
16 Honor.

17 THE COURT: It goes to weight. You can
18 cross-examine.

19 And by weight I mean what you choose in
20 considering all of the evidence, ladies and
21 gentlemen, to give consideration to that answer.

22 But you can ask that question again if you
23 choose to, Mr. Mango.

24 MR. MANGO: No, I'm going to let it stand,
25 your Honor.

1 THE COURT: Okay.

2 BY MR. MANGO:

3 Q. Subsequently, did you observe a change in the
4 area around these tanks?

5 A. It was not too long after that it was covered
6 with raw breeze.

7 Q. Okay. It was covered with raw breeze?

8 A. Raw breeze, yes.

9 Q. Did there come a time when you became aware of
10 a fire in the vicinity of these two tanks?

11 A. Yes, I did.

12 Q. Okay. Approximately when was that fire?

13 A. Late summer, early fall of 2008, I believe it
14 was.

15 Q. Okay. Please tell the jury what you observed
16 at that time.

17 A. By the time I got out to the fire, after I
18 heard on the radio that there was a fire out at the
19 old tanks, the -- the grass was burning pretty well
20 around the tar and then the tar itself consequently
21 started on fire.

22 Q. Okay. Did you try or assist in trying to put
23 this fire out?

24 A. Yes, there was a few of us out there with some
25 fire extinguishers, but that wasn't adequate.

1 BY MR. MANGO:

2 Q. So what exactly did you observe on fire?

3 A. The grass and the tar.

4 Q. Did any fire companies respond to assist in
5 putting this fire out?

6 A. Yes, they did.

7 Q. How long did it take the fire companies to put
8 this fire out?

9 A. I'd say around three hours.

10 Q. All right. Who else from the Tonawanda Coke
11 Corporation was present in the area at this time?

12 A. There was myself, Dan Heukrath, Gene Wolkowski
13 was out there. There was Dave Dahl, the
14 gentlemen -- the people from coal handling, a few
15 more hourlies that come out to give us a hand,
16 mostly maintenance people.

17 Q. Okay. Did you see Defendant Kamholz at all
18 during this time?

19 A. After the fire, yes.

20 Q. In the area?

21 A. In the area, yes.

22 MR. MANGO: Your Honor, I'd like to pull
23 up Government Exhibit 125.02 for identification
24 purposes, and absent an objection, offer this into
25 evidence.

1 THE COURT: 125.02. Any objection?

2 MR. LINSIN: No objection, your Honor.

3 MR. PERSONIUS: No objection, Judge.

4 THE COURT: Okay. Received. No
5 objection. May be published.

6 (Government's Exhibit 125.02 was received
7 into evidence.)

8 BY MR. MANGO:

9 Q. Mr. Brossack, you see that photograph on your
10 screen?

11 A. Yes, I do.

12 Q. Okay. Can you tell the jury what -- what
13 your -- what they're looking at in this photograph?

14 A. This was -- this was the tank involved in the
15 fire. This was where -- at the base of this is
16 where the tar spills were.

17 Q. Okay. We don't have an approximate height
18 here. For the jury, can you tell them
19 approximately how high is this tank we're looking
20 at?

21 A. Maybe 25, 30-foot, maybe. Something like that.

22 MR. MANGO: Your Honor, the government
23 would ask to pull up Government Exhibit 125.03 for
24 identification purposes, and absent an objection,
25 offer this into evidence.

1 THE COURT: Okay. We're talking 125.03.

2 MR. LINSIN: No objection, your Honor.

3 MR. PERSONIUS: One minute please, Judge.

4 No objection, Judge.

5 THE COURT: Okay. Received. No

6 objection. May be published.

7 MR. MANGO: Thank you, your Honor.

8 (Government's Exhibit 125.03 was received
9 into evidence.)

10 BY MR. MANGO:

11 Q. Mr. Brossack, can you tell the jury what we're
12 looking at here?

13 A. That's west of where the tank is that we just
14 looked at.

15 Q. All right. And so was this -- we see some
16 ground in this photograph?

17 A. Yes.

18 Q. Was this part of the ground that was on fire?

19 A. Yes, it was.

20 Q. And the tank we just looked at, was that on
21 fire?

22 A. I don't believe the tank itself was burning,
23 no. I think it was the -- the material around it
24 that was burning.

25 Q. Okay. I'd like to talk to you now about the

1 quench areas. I remember you testifying you
2 used --

3 THE COURT: Well, ask the question, okay?

4 MR. MANGO: Yes.

5 BY MR. MANGO:

6 Q. When you testified did you use the term "quench
7 station"?

8 A. Yes.

9 Q. Did there ever come a time when you had a
10 conversation with Defendant Kamholz about the
11 quench towers at the Tonawanda Coke facility?

12 A. Yes.

13 Q. All right. Can you tell the jury when this
14 conversation took place?

15 A. I believe it was around 1998. It was after I
16 made general foreman.

17 Q. Okay. What caused you to have this
18 conversation with Defendant Kamholz?

19 A. I called somebody on the radio -- I can't
20 remember who it was -- to go down to number 1
21 quench tour. And later on Mark had come up to me
22 and said that they're not quench towers, they're
23 quench stations. I figured he was just, you know,
24 correcting terminology. And I asked him why. He
25 said that quench towers need baffles, quench

1 stations don't. And I said okay. Ever since then,
2 I've called them quench stations.

3 Q. Okay. And when he said this to you, he was
4 using the word "towers" and the word "stations" in
5 plural?

6 A. Yes.

7 Q. So he was referring to them as quench towers,
8 or quench stations?

9 A. Yeah.

10 MR. MANGO: Your Honor, if I may have a
11 moment.

12 THE COURT: Sure.

13 MR. MANGO: I just want to check an
14 exhibit.

15 Yes, your Honor, I'd like to pull up Government
16 Exhibit 15.02.097 already in evidence.

17 THE COURT: Fifteen or 115?

18 MR. MANGO: 15.02.097.

19 THE COURT: Yes, received. Okay.

20 BY MR. MANGO:

21 Q. I'd like to focus in on this, Mr. Brossack. Do
22 you see this?

23 A. Yes, I do.

24 Q. What is this item that we're looking at on the
25 photograph?

1 A. That's the -- the old pressure release valve.

2 THE COURT: Tap it where it is, please.

3 THE WITNESS: I'm sorry?

4 THE COURT: Tap the screen where it is.

5 Thank you.

6 BY MR. MANGO:

7 Q. All right. You said "the old pressure release
8 valve."

9 A. Yes.

10 Q. Did you have another term that you called this?

11 A. Bleeder stack.

12 Q. Bleeder stack?

13 A. Yes.

14 Q. How did this -- how did this operate?

15 A. If the plant pressure went up past a certain --

16 MR. LINSIN: Objection. Objection to
17 foundation.

18 THE COURT: Okay. You need a preliminary
19 question or two. Sustained.

20 BY MR. MANGO:

21 Q. Are you familiar with this pressure release
22 valve/bleeder stack?

23 A. Yes.

24 Q. Are you familiar with how it operated?

25 A. Yes.

1 Q. Did you see it operate during your time at
2 Tonawanda Coke?

3 A. Yes.

4 Q. Did you come to learn what the purpose of this
5 bleeder stack was?

6 A. Yes, I did.

7 Q. All right.

8 MR. PERSONIUS: Your Honor, how did he
9 come to learn?

10 THE COURT: I'm sorry?

11 MR. PERSONIUS: The question would be how
12 did he come to learn. Because you still have to
13 have a proper foundation.

14 THE COURT: You may follow-up.

15 MR. MANGO: Yes, your Honor.

16 BY MR. MANGO:

17 Q. How do you know this is the bleeder stack?

18 A. I was told that's what it was.

19 Q. Okay. And you've seen it in operation?

20 A. Yes.

21 Q. Okay. How did this bleeder stack operate?

22 MR. PERSONIUS: Object, your Honor,
23 especially based on those responses. I think there
24 is a foundation issue.

25 THE COURT: No, at this point, I'll deem

1 it sufficient for further questioning and then you
2 may cross-examine.

3 Ladies and gentlemen, it's up to you to
4 determine whether the witness has sufficient
5 knowledge based on his testimony to give the
6 answers that will be asked of him by Mr. Mango at
7 this point. That's what we call -- it's a matter
8 of weight for the jury, not W-A-I-T, but weight,
9 like how heavy is it, how much do you give it,
10 all -- full consideration, something less than
11 that, no consideration at all or no value at all.
12 That's up to you. Okay.

13 BY MR. MANGO:

14 Q. Mr. Brossack, how did this bleeder stack
15 operate, if you can tell the jury, please?

16 A. There's a certain set point on it for the plant
17 pressure. If the plant pressure for some reason
18 goes beyond that set point, the valve will open and
19 release that pressure.

20 Q. Okay. I'd like to show you another photograph
21 already in evidence Government Exhibit 49.19.

22 Okay. Do you see that photograph on your
23 screen?

24 A. Yes, I do.

25 Q. Okay. If I focus on this area here, do you see

1 the item that you referred to as the bleeder stack
2 or pressure release valve?

3 A. It's right here.

4 Q. Okay. Is the bleeder still in operation today?

5 A. No.

6 Q. During the time the bleeder was in service,
7 what was the purpose of the bleeder?

8 A. To relieve excess gas pressure.

9 Q. Okay. And you mentioned if it -- if the
10 pressure setting got above a certain point, the
11 valve would open?

12 A. Yes.

13 Q. When the valve would open, what would come out
14 of the bleeder?

15 A. Coke oven gas.

16 Q. And what was the frequency with which the
17 bleeder would release coke oven gas to the
18 atmosphere?

19 MR. LINSIN: Your Honor, I renew my
20 objection on foundation both -- actually to the
21 last question, and to the one that has now been
22 posed.

23 THE COURT: Yeah, I -- I'm going to
24 sustain the objection with respect to foundation as
25 well as time frame.

1 MR. MANGO: Yes, your Honor.

2 BY MR. MANGO:

3 Q. During your employment at the Tonawanda Coke
4 facility, did you see this bleeder operate?

5 A. Yes.

6 Q. Do you know when this bleeder or -- how long
7 has this bleeder been there?

8 A. As long as I can remember. I can't tell you
9 when it was installed.

10 THE COURT: And the period of time you've
11 been there is what again?

12 THE WITNESS: Thirty-two years.

13 THE COURT: Okay.

14 BY MR. LINSIN:

15 Q. Starting in what year?

16 A. 1981.

17 Q. Up to the present?

18 A. Up to the present.

19 Q. All right. Now, you mentioned it's -- this
20 bleeder is not operational today.

21 A. No.

22 Q. Now, between the time that you were aware of
23 its operations, that it was in service --

24 A. Yes.

25 Q. -- did the purpose of this bleeder, was it the

1 same?

2 MR. PERSONIUS: Your Honor, again.

3 THE COURT: To the form of the question,
4 sustained.

5 BY MR. MANGO:

6 Q. Okay. During -- during your time at Tonawanda
7 Coke, from the time you first became aware of it to
8 the time it came out of service, did you make
9 observations of this bleeder as to the frequency
10 with which it would release?

11 A. Yes, I did.

12 Q. Okay. What was the frequency with which the
13 bleeder would release coke oven gas to the
14 atmosphere?

15 MR. PERSONIUS: Your Honor, he hasn't -- I
16 still think the foundation is inadequate because we
17 don't have any testimony when he became aware of
18 this valve.

19 THE COURT: Well, on that basis, that's
20 the time frame that we were talking about earlier.
21 So unless it's more specific, I'll sustain the
22 objection. But I'll give you the opportunity to
23 pursue the foundation.

24 MR. MANGO: Yes, your Honor.

25 BY MR. MANGO:

1 Q. Mr. Brossack, let's assume for the time period
2 from 2005 -- starting in 2005, up until the time it
3 was taken out of service -- okay. You've got that
4 time period in your head?

5 A. Yes.

6 Q. Okay.

7 -- did you see this bleeder stack/pressure
8 release valve operate?

9 A. Yes.

10 Q. Okay. Did you make observations as to how
11 frequent this bleeder released gas?

12 A. It would --

13 Q. Yes or no?

14 A. Yes. I'm sorry.

15 Q. Okay.

16 THE COURT: When was it taken out of
17 service again, please?

18 THE WITNESS: I believe it was 2010 it was
19 taken out of service.

20 THE COURT: Thank you.

21 BY MR. MANGO:

22 Q. Okay. So during that time period you made
23 observations as to --

24 A. I have a cramp. I'm sorry.

25 Q. If you need to stand, I'm sure the Judge will

1 let you take a -- stand if -- he's got a cramp.

2 THE COURT: Are you speaking for me now,
3 Mr. Mango?

4 MR. MANGO: I'm sorry, your Honor.

5 THE COURT: I mean, you're assuming I'm
6 easy, right?

7 All right. No, if you need to stretch, that's
8 fine.

9 THE WITNESS: No, no, that's fine. Let's
10 just go.

11 MR. MANGO: Okay.

12 THE WITNESS: I'm sorry.

13 BY MR. MANGO:

14 Q. All right. So you made observations -- did you
15 make observations as to how frequently this would
16 release from '05 to the time it was taken out of
17 service?

18 A. Yes, I did.

19 Q. Tell the jury, please, what was the frequency
20 with which the bleeder would release coke oven gas
21 to the atmosphere?

22 A. When the battery would reverse, which now is
23 every 20 minutes, because the battery's -- when the
24 battery is halfway through reversal, it takes no
25 gas. So obviously the plant pressure goes up

1 because we're not taking gas, and the valve would
2 open up to relieve that pressure. And then when
3 we're charging ovens, because it would get quite a
4 bit of plant pressure when you charge an oven.

5 Q. How often do reversals happen?

6 A. Right now every 20 minutes.

7 Q. Okay. So how often would this bleeder flare
8 stack open up?

9 A. If the plant pressure went up at that time past
10 the set point, during the reversal, every 20
11 minutes.

12 Q. Okay. If you can describe, in really simple
13 terms for the jury, what a reversal is.

14 A. You're reversing flues.

15 Q. Okay.

16 A. You burn on different flues to keep an even
17 heat on the battery. So every 20 minutes the
18 battery will reverse in an even/odd situation to
19 keep an even heat different -- like at one time
20 your even will be burning on one side, your odd on
21 the other and it reverses to heat up where it
22 wasn't heated before to keep a constant heat on the
23 battery.

24 Q. Okay. Let's jump for a minute to Government
25 Exhibit 130.05 which is in evidence.

1 This is a picture of the oven, correct?

2 A. Yes.

3 Q. All right. You used the term "flues."

4 A. Yes.

5 Q. The reversal of the flues?

6 A. Yes.

7 Q. Again, in simple terms, describe for the jury
8 with reference to this photograph, what -- what are
9 these flues and where are they located?

10 A. You can't see them in there.

11 Q. Try to tell the jury.

12 A. See this right here?

13 Q. Yes.

14 A. That's -- that's one wall. The flues are in
15 between this oven and this oven.

16 Q. So --

17 A. This oven and this oven. I'm sorry.

18 Q. -- would they be where I just put the dot at
19 the bottom?

20 A. Yes. Yes.

21 Q. Okay. And which direction do the flues run in
22 the oven? Is there one flue?

23 A. No, there's -- there's 28 across.

24 Q. Twenty-eight across going in which direction?

25 A. One to 28 north to south. North being number

1 one.

2 Q. From one end of the oven to the other end of
3 the oven?

4 A. From north to south, yeah.

5 Q. So in that wall there --

6 A. There's 28 flues.

7 Q. -- there is a line of 28 flues?

8 A. Yes.

9 Q. Are they all on the bottom, or are there any on
10 the top?

11 A. No, they're all on the bottom.

12 Q. Okay. And what comes out of these flues?

13 A. Coke oven gas.

14 Q. What's the purpose for the coke oven gas that
15 comes out of these flues that are on the bottom of
16 the wall?

17 A. To heat the ovens.

18 Q. All right. Now, you mentioned there's a
19 reversal. Again, there's another wall on this
20 side?

21 A. Yes.

22 Q. Is there another series of flues going down
23 that wall?

24 A. Yes.

25 Q. During a reversal, what happens to the gas in

1 these flues? If you can tell the jury now with
2 that description.

3 A. Okay. Let's say when the battery reverses,
4 this wall, which I just marked, might be burning on
5 the even flue. This wall next to it might be
6 burning on the odd flue. When it reverses, it will
7 be just the opposite.

8 Q. Okay. So in this oven here, where we've got
9 the circle, you've got flues one through 28?

10 A. Yes.

11 Q. And if you say it's burning on the odd flue,
12 that would be one, three, five --

13 A. Right.

14 Q. -- seven, down the line?

15 A. Yes.

16 Q. Okay. And then during -- why would you reverse
17 flues?

18 A. To keep a constant heat on the battery. While
19 your -- while your even flues are burning on that
20 oven wall, your odd flues aren't. So once it
21 reverses, the even flues shut off and the odd flues
22 light.

23 Q. Is there any damage that could happen to the
24 oven if you just burn from one set of flues?

25 A. You could get cold spots in the walls, yes.

1 Q. All right. So every 20 minutes this reversal
2 happens?

3 A. Every 20 minutes.

4 Q. Okay. Physically, how does the reversal
5 happen?

6 A. There's mechanisms downstairs that take care of
7 that. There's large arms and -- it's quite
8 involved on how it works.

9 Q. That's beneath the oven down in that area?

10 A. Even farther down.

11 Q. Okay. How long from start to finish does the
12 reversal process take from getting the even flues
13 that are firing shut off and the odd flues firing?
14 How long does that take?

15 A. Maybe three or four minutes at the most.

16 Q. Three or four minutes?

17 A. Yes.

18 Q. Okay. Is there a period of time where there's
19 no gas flowing to all of the flues?

20 A. Yes.

21 Q. So none of the flues, even or odd, have any
22 gas?

23 A. Right.

24 Q. How long is that period of time?

25 A. Maybe a minute or minute and a half. Not much

1 more.

2 Q. What happens to the -- to the line pressure
3 when there's no gas going to any of those flues?

4 A. Your plant pressure goes up.

5 Q. And does that correspond to the releases in the
6 bleeder that you've observed?

7 A. Yes.

8 Q. During periods of high production would
9 releases from that bleeder be affected?

10 A. At times, yes.

11 Q. Okay. Can you explain that for the jury,
12 please?

13 A. If -- if the set point on the -- on the bleeder
14 was too low, and we're at a higher production,
15 obviously producing more gas, it's going to bleed
16 off.

17 Q. Have you heard the term "cogeneration"?

18 A. Yes.

19 Q. Okay. Can you describe that for the jury?

20 A. It was -- it ran off the boilers and we made
21 our own power. It was a big generating unit that
22 made our own power.

23 Q. Did you -- if we can go back to

24 Exhibit 15.02.097 in evidence, please. Okay.

25 Again, that's the bleeder stack pressure release

1 valve --

2 A. Yes.

3 Q. -- that you've seen operate?

4 A. Yes.

5 Q. Okay. During the times when you were in
6 cogeneration, making your own power, did you still
7 see this go off?

8 A. When it would reverse and when we charged, yes.

9 Q. And that was every 20 minutes?

10 A. Yes.

11 Q. Was the bleeder, though, known to other
12 Tonawanda Coke employees?

13 A. Yes.

14 Q. Did Defendant Kamholz know about this bleeder?

15 MR. PERSONIUS: Objection, your Honor, to
16 what Mr. Kamholz knew.

17 THE COURT: Calls for a yes or no.

18 Overruled.

19 You may answer.

20 THE WITNESS: Yes, he did.

21 BY MR. MANGO:

22 Q. Okay. How do you know that?

23 A. In the colder weather you get a condensate on
24 Broadway from the -- or you used to, I should say,
25 from that.

1 Q. Okay.

2 A. And I was coming back down Broadway one day and
3 there happened to be quite a bit of condensate on
4 the road. And Mark was coming the other way toward
5 me, and I just asked him about it, you know, is
6 this thing all right? He said, yeah, that's fine.
7 Everything's doing what it's supposed to be doing.
8 I said okay and left it at that.

9 Q. Okay. So, again, where did this conversation
10 take place?

11 A. On Broadway. Right -- right underneath the
12 bleeder where the -- where the condensate was.

13 Q. Okay. Was the condensate coming out of this
14 bleeder pressure release valve?

15 A. It -- it -- it would of had to have been
16 where -- where it was. It was like a V right
17 underneath there across the road.

18 Q. Okay. And this condensate, would it -- during
19 winter would it freeze at all?

20 A. Yeah, it would.

21 Q. Okay. Was there anything in this condensate
22 that froze in a certain type of pattern?

23 A. I never really looked for a pattern in it. I'm
24 sorry.

25 Q. Let me come at it a different way.

1 Have you ever seen naphthalene crystals?

2 A. Oh, yeah.

3 MR. PERSONIUS: Your Honor, object to the
4 leading.

5 THE COURT: No. Overruled.

6 You may answer.

7 THE WITNESS: Yes, I have seen
8 naphthalene.

9 BY MR. MANGO:

10 Q. Can you describe for the jury what -- when I
11 say the term "naphthalene crystal" what that means?

12 A. Small snow flakes, best way I can describe it.

13 Q. Okay. And did you ever see those small snow
14 flakes in the area of this bleeder/pressure release
15 valve?

16 A. Yes.

17 Q. Okay. Would there have been these naphthalene
18 crystals when you had this conversation with
19 Defendant Kamholz?

20 A. Down on the ground in the -- in the -- yes,
21 they would be in there.

22 Q. When did this conversation take place with
23 Defendant Kamholz, if you can recall?

24 A. I really can't recall really when it was.

25 Q. Okay. And, again, what -- what did he say to

1 you?

2 MR. PERSONIUS: Your Honor, I object.

3 It's been asked and answered.

4 THE COURT: Yeah, it was. Sustained.

5 BY MR. MANGO:

6 Q. Okay. Do you know a person by the name of Pat
7 Cahill?

8 A. Yes, I do.

9 Q. How do you know him?

10 A. Pat's worked there, I believe, now over 20
11 years, so him and I know each other.

12 Q. Okay. And you say he worked there, you're
13 saying Tonawanda --

14 A. Tonawanda Coke, yes. I'm sorry.

15 Q. Did you have times to -- so you worked with
16 him. Did there come occasions where you -- I'm
17 sorry. Let me just ask you: How would you
18 describe his personality?

19 A. Pat's kind of a laid-back, likes-to-joke-around
20 sort of guy.

21 Q. Do you recall an extended inspection by the EPA
22 in April of 2009?

23 A. Yes.

24 Q. Did there come a time during that inspection
25 that you observed Pat Cahill speaking to the

1 inspectors?

2 A. They were all over there. Yes, he was speaking
3 with them.

4 Q. Okay. Who else did you observe from the
5 Tonawanda Coke Corporation speaking with the
6 inspectors with Pat Cahill at this time?

7 A. Mark was there. I believe -- I believe the BP
8 operator was there. And to be honest with you, I
9 didn't notice much -- anybody else. There was
10 quite a few people, but some of them I didn't know.
11 I didn't know who they were.

12 Q. Okay. Subsequently that day did you see Pat
13 Cahill again?

14 A. Yes, I did.

15 Q. Did you have a conversation with him?

16 A. Yes, I did.

17 Q. Can you describe what Pat Cahill's demeanor was
18 like during this subsequent conversation?

19 A. He was upset and mad.

20 Q. Was that consistent or not consistent with his
21 personality, his general personality?

22 A. His general personality? He wasn't like that,
23 or he isn't like that, I should say.

24 MR. MANGO: Your Honor, may I have a
25 moment, please?

1 THE COURT: Certainly.

2 MR. MANGO: Your Honor, I have no further
3 questions fro Mr. Brossack.

4 THE COURT: Okay.

5 MR. PERSONIUS: Your Honor, we mentioned
6 before we started trial there might be witnesses,
7 where, with your permission, I would go first.
8 With your permission, may I go first?

9 THE COURT: Absolutely.

10 MR. PERSONIUS: Thank you, Judge.

11 THE COURT: Everybody okay, Ladies and
12 Gentlemen?

13 Okay. Mr. Personius, you're on. Thank you.

14 Mr. Brossack, you're doing okay?

15 THE WITNESS: Yes, I'm fine. Thank you.
16 Just getting a drink of water.

17 THE COURT: Okay.

18 CROSS-EXAMINATION BY MR. PERSONIUS:

19 Q. I had to look. Good afternoon.

20 A. Yeah, so did I. Good afternoon.

21 Q. Okay. How often do you wear the -- the suit
22 and the tie, or the sport coat and the tie?

23 A. Not very often.

24 MR. PERSONIUS: Judge, I mentioned to
25 Mr. Brossack as we came up in the elevator that I

1 didn't recognize him, and I thought he was one of
2 the blue coats. And turned out it was him.

3 THE COURT: Okay. He probably was lent --

4 MR. PERSONIUS: Pardon me?

5 THE COURT: -- the blazer by one of the
6 blue coats. They have a side business,
7 Mr. Personius, just so you know.

8 MR. PERSONIUS: Maybe he got Chris's used
9 one, I don't know.

10 THE COURT: Okay.

11 BY MR. PERSONIUS:

12 Q. It's nice to see you again, Mr. Brossack.

13 A. Nice seeing you.

14 Q. Mark Kamholz has been at Tonawanda Coke, do you
15 remember how long?

16 A. He was there when I got there, sir.

17 Q. All right. And you got there, I think you
18 said, in 1981?

19 A. February of '81, yes.

20 Q. And you described the personality of
21 Mr. Cahill. You're familiar with Mark's
22 personality and demeanor also, is that true?

23 A. Yes.

24 Q. And would you agree that Mark's personality
25 would be reserved?

1 A. I don't know if I would call it reserved.

2 Q. Why don't you describe his personality.

3 A. Mark will joke around with the best of us. You
4 know, I don't -- I don't say he's -- he's nasty
5 or -- he's just a normal, you know, sort of guy.
6 I've known him for years.

7 Q. Okay. Do you socialize with him?

8 A. No. Not outside the plant, no.

9 Q. Do you socialize with other employees at
10 Tonawanda Coke?

11 A. Not --

12 Q. By that I mean see him -- see him outside the
13 plant.

14 A. Every once in a while one of our general
15 foremen, Justin Smith, he just bought a house in my
16 neighborhood, and I'll go over to see how he's
17 doing because he has a lot of work to do on it.
18 But other than that, as far as the current
19 employees at Tonawanda Coke, no, I don't socialize
20 outside the plant.

21 Q. Are there any former employees that you
22 socialize with --

23 A. Yes.

24 Q. -- from Tonawanda Coke?

25 A. Yes.

1 Q. Could you tell us who they are, please?

2 MR. MANGO: Objection, your Honor. I
3 don't know the relevance of this --

4 THE COURT: All right.

5 MR. MANGO: -- round of questioning.

6 THE COURT: What is the relevance?

7 MR. PERSONIUS: It may go to bias, your
8 Honor.

9 THE COURT: Okay. We'll see.

10 I'll entertain a motion to strike if it
11 doesn't, Mr. Mango.

12 You may proceed.

13 THE WITNESS: I can answer?

14 Oh, okay. Gerry Priamo I still -- still see
15 each other outside the plant.

16 BY MR. PERSONIUS:

17 Q. And based on your experience, you've observed
18 the interaction between Mr. Kamholz and Mr. Priamo?

19 A. Yes.

20 Q. And do you have some knowledge based on those
21 observations as to what the relationship is between
22 Mr. Priamo and Mr. Kamholz?

23 MR. MANGO: Objection, your Honor. Again,
24 relevance.

25 THE COURT: Yeah, sustained.

1 MR. PERSONIUS: Has Mr. Priamo ever made
2 comments to you about what his thoughts are on
3 Mr. Kamholz?

4 MR. MANGO: Objection, your Honor.

5 THE COURT: Sustained.

6 No answer. You don't have to answer that
7 question. I'm sorry.

8 THE WITNESS: That's all right.

9 BY MR. PERSONIUS:

10 Q. How many people work at Tonawanda Coke?

11 A. I think right now there would be 95 or 100.

12 Q. Is that -- over the years that you've worked
13 there, has it been around that number that have
14 been worked there?

15 A. It all depended on production. We -- at one
16 time we were up to about 150, 160. That was years
17 ago.

18 Q. And Mark Kamholz, do you know what his position
19 is at the company currently?

20 A. Environmental manager, yes.

21 Q. And has that been his position for some period
22 of time?

23 A. I believe so, yes.

24 Q. And going back as long as you've been at the
25 company, has that been Mr. Kamholz's position?

1 A. When I first got there, I really didn't know
2 his position. I knew he worked in the lab but I
3 didn't know his position.

4 Q. Do you know if anybody at Tonawanda Coke
5 reports to Mr. Kamholz?

6 A. I would believe Bruce Schlager -- oh, God, I
7 forgot their names -- Deborah Nolland and Jeff
8 Baker.

9 Q. Okay. The three individuals that you've
10 identified, did they all work in the lab?

11 A. They work in the lab, yes.

12 Q. And those are the people that would -- would
13 report to Mr. Kamholz?

14 A. I would believe so, yes.

15 Q. And as environmental manager at Tonawanda Coke,
16 do you know what Mr. Kamholz's duties are?

17 A. Some of them. Some of the great things he's
18 told me. I'm sure there are more than what he's
19 told me.

20 Q. Okay. Well, based on your observations, you
21 see what he does at the plant?

22 A. Yes.

23 Q. And -- and, generally, does his job involve
24 trying to ensure that environmental rules are
25 followed at the plant?

1 A. Yes.

2 Q. Okay. And would it be fair to say that at
3 times his attempt to enforce those rules is not
4 always well received?

5 A. I'm not sure I understand your question.

6 Q. Well, have you ever seen occasions where
7 Mr. Kamholz has attempted to enforce a particular
8 environmental rule and the employee or employees
9 that he's dealing with have not responded well to
10 that?

11 A. No, not that I can remember. No.

12 Q. You had mentioned about the conversation that
13 you had with Mr. Kamholz regarding a flare that's
14 on the top of the battery.

15 A. Yes, sir.

16 Q. And when did you say that happened?

17 A. I believe it was '94, '95. Someplace up around
18 there.

19 Q. All right. And Mr. Kamholz was asked a
20 question about the -- the fact that the -- the
21 pilot light was not on --

22 A. Yes.

23 Q. -- for the flare. And you testified that his
24 response was that natural gas was expensive?

25 A. Yes.

1 Q. And is that all he said?

2 A. That's all he said to me at that time, yes.

3 Q. And in terms of who made that decision to not
4 have that natural gas run to the pilot, you don't
5 know who made that decision, do you?

6 A. No, I don't.

7 MR. MANGO: Objection, your Honor.

8 THE COURT: I'll let it stand. It's asked
9 and answered. Go ahead.

10 MR. PERSONIUS: And you don't mean to
11 suggest by your testimony that it was Mr. Kamholz
12 that made that decision, do you?

13 MR. MANGO: Objection to that, your Honor.

14 THE COURT: Overruled.

15 MR. PERSONIUS: That means you can answer.

16 THE WITNESS: Oh, okay.

17 THE COURT: I'm sorry.

18 THE WITNESS: Could you repeat it, please?

19 BY MR. PERSONIUS:

20 Q. Sure.

21 A. Thank you.

22 Q. You don't mean to suggest by your testimony
23 that it was Mr. Kamholz who decided that natural
24 gas would not be run to that pilot?

25 A. No.

1 Q. Thank you. You provided testimony about your
2 observations of coal tar sludge from Tonawanda
3 Coke's coking operation being placed on the coal
4 fields.

5 A. Yes.

6 Q. All right. And the period of time that you
7 made those observations would have been when?

8 A. Would have been 1990 to '92, and then I went
9 back to coal handling in 2003. From probably just
10 about the beginning of 2003, till maybe the fall of
11 the same year. Someplace in there.

12 Q. Okay. So the early '90s and then again in --

13 A. Yes, 2003.

14 Q. Okay. For some part of 2003 --

15 A. Yeah.

16 Q. -- true?

17 And do you know what the purpose is for putting
18 the -- mixing the coal tar sludge with the coal --

19 A. Yes.

20 Q. -- before it goes into the coking process?

21 A. Yes.

22 Q. You do know what that is?

23 A. Yes.

24 Q. Okay. Would you please tell the jury why
25 that's done?

1 A. It's to regenerate it back through the system
2 and draw anything that was left in there out.
3 There's probably still some good tar left in there
4 so we regenerate it.

5 Q. Is that process consistent with how a coking
6 operation ideally should run? I can ask that a
7 different way.

8 A. If you would, please. I'm not sure what
9 you're --

10 Q. We've heard some testimony already about how --
11 and you've given us some about how a coking
12 operation runs.

13 A. Okay.

14 Q. And -- and one of the purposes of a coking
15 operation is to make coke.

16 A. Yes.

17 Q. All right. And then there's been testimony
18 about the coke oven gas that's created that goes
19 over to an area that's called the by-products.

20 A. Uh-huh. I'm sorry, yes.

21 Q. You testified a little bit about by-products.

22 A. Yes.

23 Q. And in that by-products area we've heard
24 testimony, I think a little bit from you, about
25 what gets drawn out of the coke oven gas.

1 A. Yes.

2 Q. All right. And then the -- the -- what's left
3 of that coke oven gas gets sent back to either the
4 battery or down to the boiler?

5 A. Yes.

6 Q. And -- and it gets reused there, whether it be
7 in the -- in the ovens again, the coke oven gas
8 gets reused or --

9 A. Or the boiler house.

10 Q. -- or it gets used down at the boiler, true?

11 A. Yes.

12 Q. And -- and my question was designed to ask you
13 if, with this coal tar sludge, that's another
14 by-product of the coking operation, if that isn't
15 just put back into the operation?

16 THE COURT: Do you understand the
17 question?

18 THE WITNESS: No, I really don't. I'm
19 sorry, sir. I don't understand what you want here.

20 BY MR. PERSONIUS:

21 Q. The coal tar sludge, you've testified, gets
22 picked up by a front end loader?

23 A. Yes.

24 Q. And it gets taken over to the coal fields?

25 A. Yes.

1 Q. And it gets mixed with the coal --

2 A. Yes.

3 Q. -- right? And then that coal is put back
4 through the process?

5 A. Yes.

6 Q. So the coal tar sludge is recycled.

7 A. It's regenerated, yes.

8 Q. Okay. All right. So you're taking what you
9 have left from the coking process and you're
10 putting it back on top of the coal to send it
11 through again and reuse it, correct?

12 A. Yes.

13 Q. Okay. That's -- that's my point.

14 THE COURT: No, you're doing the right
15 thing. If you don't understand it, please --

16 THE WITNESS: Okay.

17 THE COURT: It's the attorney's job to
18 make it clear to you, so you can answer if you can,
19 okay?

20 THE WITNESS: Thank you.

21 THE COURT: Thank you.

22 BY MR. PERSONIUS:

23 Q. Okay. The -- it's helpful to be clear about
24 what you observed in terms of what was done with
25 this coal tar sludge. Okay?

1 A. Okay.

2 Q. And you've testified that you observed it being
3 picked up by the front end loader and there were
4 times when it would be taken to what you described
5 as the pad, right?

6 A. Yes.

7 Q. And there are times when it was taken right
8 directly to the coal fields, true?

9 A. Yes.

10 Q. When the coal tar sludge was taken to the -- to
11 the coal fields, it was put directly into the coal
12 piles?

13 A. Yes.

14 Q. All right. And then you described this mixing
15 process that took place.

16 A. When they back drag it, yes.

17 Q. Beneath the coal piles you referred to,
18 what's -- at the base of the coal piles is the coal
19 fields?

20 A. Yes.

21 Q. And as long as you've worked at Tonawanda Coke,
22 has that been the case, that the coal piles sit on
23 what you described as the coal fields?

24 A. Yes. Yes.

25 Q. The coal fields are the -- the result of the

1 coal that may at one point have been part of a coal
2 pile that has -- has come down and become part of
3 the base for the old coal field?

4 MR. MANGO: Objection, your Honor. It
5 seems like Mr. Personius is testifying here.

6 THE COURT: Yeah, it's more than leading,
7 and I think I'll sustain the objection.

8 You have to do better on your questions.

9 MR. PERSONIUS: Okay.

10 THE COURT: You can't tell him what you
11 think. Ask him the questions.

12 MR. PERSONIUS: On cross-examination, your
13 Honor, I'm not permitted to lead?

14 THE COURT: I'm saying it's more than
15 leading. It gives the appearance that you're
16 testifying, so you have to fine tune that a little
17 bit. Okay?

18 MR. PERSONIUS: All right. I understand.

19 THE COURT: But, otherwise, you can lead
20 under 611(c), as you know, Mr. Personius.

21 BY MR. PERSONIUS:

22 Q. Let me ask it this way then: The -- the base
23 of the -- of the coal piles which you've described
24 as the coal fields --

25 A. Yes.

1 Q. -- what -- where does -- where does that base
2 come from?

3 A. Years of accumulated coal.

4 Q. Okay. And it just keeps building up and up and
5 up?

6 A. Yes.

7 Q. Thank you. And as far as the depth of the --
8 what we described as the coal fields, do you know
9 what that depth is?

10 A. No, I'm sorry, I don't.

11 Q. Do you know whether it's -- it's feet as
12 opposed to inches?

13 A. That would only be an assumption.

14 Q. Okay. We don't want you to do that. You've
15 referred to a -- a conversation you had with
16 Mr. Kamholz about the concept of a quench station.

17 A. Yes.

18 Q. Okay. And did you tell us when that
19 conversation occurred?

20 A. I believe it was around '98 -- '97, '98 after I
21 made general foreman.

22 Q. And you had made a call on the radio?

23 A. Yes.

24 Q. And I think you told us that when you made that
25 call, you specifically referred to quench tower

1 number 1?

2 A. Yes.

3 Q. And quench tower number 1 would be the -- the
4 tower to the west?

5 A. To the west.

6 Q. All right. And it was at that point that
7 Mr. Kamholz contacted you and drew this distinction
8 between a quench station and a quench tower?

9 A. Yes, sir.

10 Q. At the time you had the conversation with
11 Mr. Kamholz about this, was there anything more to
12 it other than what you've told us?

13 A. Not that I can recall, no.

14 Q. Would it be fair to describe it as a friendly
15 conversation?

16 A. Oh, yes. He wasn't upset.

17 Q. As far as the pressure relief valve is
18 concerned, you've indicated to us that you have
19 some knowledge about how that operates?

20 A. Yes.

21 Q. And it -- it's based in part upon -- upon what
22 you've observed?

23 A. Yes.

24 Q. It's also based upon what you've been told?

25 A. Yes.

1 Q. Okay. And -- and do you remember who it is
2 that you have spoken to about the operation of the
3 pressure relief valve?

4 A. That would be obviously the by-products
5 foreman. When I was on shift, the by-products
6 operator. Sometimes the heater would know where it
7 was -- where it was set. In general conversation,
8 just the people that it applied to. Myself, the BP
9 operator, the BP foreman, the head heater, the
10 other general foreman, in case it was changed, so
11 you could tell them about it when they came in to
12 relieve you.

13 Q. You said if "it was changed"?

14 A. Yeah. Like if the production went up and they
15 had to change the set point, you wanted to let the
16 other general foreman know where the set point was.

17 Q. I see. And if we can get into this just a
18 little bit more deeply.

19 When you refer to a "set point", could you tell
20 the jury what you mean by that?

21 A. There's a certain point of pressure that you
22 set. Once the plant pressure goes over that, the
23 pressure relief valve, or bleeder or whatever, will
24 release the pressure -- excuse me -- release the
25 pressure on the system.

1 Q. Okay. And if I understand your testimony
2 correctly, that if -- if production is higher, that
3 set point would be -- would be set higher, is that
4 your understanding?

5 A. Yes. I'm sorry. I had to sit and think about
6 it for a minute.

7 Q. All right.

8 A. Because you're producing more gas.

9 Q. Right. When production is higher, the gas
10 pressure is higher?

11 A. Yes.

12 Q. And, therefore, that set point would be placed
13 higher?

14 A. That would be up to the BP foreman, but, yes.

15 Q. Okay. And -- and that was going to be my next
16 question. As far as who sets the -- who sets the
17 set point is a terrible question.

18 But who -- who establishes the -- if you know,
19 who establishes the set point for the -- for the
20 pressure relief valve?

21 A. That would be the by-products foreman.

22 Q. As far as your -- your observations of the
23 pressure relief valve in instances when it would
24 release, how frequently would -- would you notice
25 that or would you be paying attention to the

1 pressure relief valve?

2 A. When I happen to be looking over to the BP.

3 Usually when you're on top of the battery.

4 Q. Okay. And -- and so your perspective when
5 you're observing this would be over at the battery?

6 A. Yes.

7 Q. About how far is the battery from the pressure
8 relief valve?

9 A. I don't know. I'm not good at distance. I'm
10 sorry.

11 Q. All right. Just as one example, is it further
12 than from where you're sitting to the entrance to
13 the courtroom?

14 A. Oh, yes.

15 Q. Okay. But beyond that, you can't give us an
16 idea of how far away it is?

17 A. No, I can't. I'm sorry.

18 Q. The -- the battery that you're describing is on
19 one side of this road that -- that's called
20 Broadway?

21 A. Yes.

22 Q. All right. And the pressure relief valve, as
23 we've seen from photographs, is on the other side
24 of -- of --

25 A. Yeah.

1 Q. -- Broadway?

2 A. Yes.

3 Q. And the battery is not directly across Broadway
4 from the pressure relief valve, true?

5 A. No.

6 Q. And the battery is in an easterly direction.
7 If I've got my directions right, it's east -- to
8 the east of where the pressure relief valve is.

9 A. Yes.

10 Q. So it's at a diagonal from one another?

11 A. Yeah, I'd say.

12 Q. All right. And so when -- when you testified
13 that the pressure relief valve would go off every
14 20 minutes when there was a reversal -- that's been
15 your testimony, right?

16 A. Uh-huh. Oh, I'm sorry. Yes.

17 Q. Okay. So the jury understands, you're not
18 suggesting that -- that every 20 minutes you would
19 be looking up to see if that pressure relief valve
20 went off?

21 A. No.

22 Q. And as far as whether the valve would go off,
23 it would depend, would it not, on what the pressure
24 set point was for the pressure relief valve?

25 A. Yes.

1 Q. And that -- that set point could be at a
2 certain level where there could be a reversal and
3 the pressure relief valve would still not go off?

4 MR. MANGO: Objection, your Honor. Again,
5 this is Mr. Personius testifying for the witness.

6 THE COURT: Do you understand that
7 question?

8 THE WITNESS: Yes.

9 THE COURT: All right. I'll permit it
10 over objection.

11 You may answer, please.

12 THE WITNESS: Okay. Yes, if they raise
13 the set point.

14 BY MR. PERSONIUS:

15 Q. Okay. It would all depend on what that set
16 point was set at, and that would be determined by
17 the by-products foreman?

18 A. By the by-products foreman.

19 Q. Now, you've also testified about a conversation
20 that you had with Mr. Kamholz when you were on
21 Broadway and you noticed some accumulation of frost
22 on this road that -- that we call Broadway.

23 A. Yes.

24 Q. And if I recall correctly, you don't remember
25 when that conversation occurred?

1 A. Not really, no.

2 Q. Do you know, for example, if that was within
3 the last ten years?

4 A. It may have been, yes.

5 Q. Okay. You've been pretty good about
6 remembering conversations from the 1990s, and I
7 commend you for that.

8 But this one you don't remember the date of it?

9 A. Not really, no. I'm sorry.

10 Q. All right. And were you alone or was -- was
11 someone with you when you had this conversation?

12 A. I was alone.

13 Q. You were alone?

14 A. Yes.

15 Q. Okay. And if -- as I wrote down your testimony
16 as to what you asked Mr. Kamholz, you said "Is this
17 thing all right?" Is that correctly recalling what
18 you remember asking Mr. Kamholz?

19 A. I don't think I said "thing". I think it was
20 just "is this all right", meaning the condensate on
21 the road.

22 Q. Oh, okay. That's -- that's what you were
23 referring to?

24 A. Yes.

25 Q. But what you asked him was, "Is this all

1 right"?

2 A. Yes.

3 Q. And his answer was yes?

4 A. Yes.

5 Q. All right. And was there anything more to
6 that -- that conversation other than that?

7 A. Just that he said it's -- it's doing what it's
8 supposed to do.

9 Q. Okay. And by that he was referring to the
10 pressure relief valve?

11 A. Yes.

12 Q. Now, from time to time, do the -- does the coke
13 oven gas line and -- and the different valves -- if
14 you know -- in the by-products area, do they need
15 to be cleaned out?

16 A. We do get blockages and have to steam them,
17 yes.

18 Q. All right. And have you ever been involved in
19 that -- that process of -- of cleaning out the --
20 the gas line or the valves?

21 A. The -- the one coming to the battery, yes.

22 Q. Okay. The coke oven gas line, that goes to the
23 battery?

24 A. Yes.

25 Q. So could you explain to the jury how that's

1 done?

2 A. As far as our end of it, I could.

3 Q. Okay. Well, let's try that --

4 A. Okay.

5 Q. -- please.

6 A. Okay. It's a -- sometimes -- we have an
7 underground line, and sometimes it will get -- I'm
8 sorry.

9 Sometimes it will get -- start getting or
10 sometimes fully plugged with naphthalene, tar,
11 whatever, and we have to steam that line, and then
12 open up the top of it and put a big pump in it, and
13 then pump out whatever's in there, once it's been
14 softened by the steam, into in an end loader bucket
15 so we can clear that line out and get gas back to
16 the battery.

17 Q. Is it your understanding that same process
18 takes place over in the by-products area, the
19 steaming out of the lines?

20 A. I've heard them steaming, yes.

21 Q. Okay. And when you do that, one of the
22 substances that you -- you could be trying to clean
23 out of the line could be naphthalene?

24 A. Yes.

25 Q. All right. And in the by-products area on

1 Broadway, is there -- if you know, is there a sump
2 that's associated with steaming out the lines? Do
3 you know about that sump that's on -- on Broadway?

4 A. We have a sump for the battery that we pump
5 every day.

6 Q. All right. But where -- where is that located?

7 A. That's on Broadway. I don't know if that's the
8 one you're referring to.

9 Q. Okay. Does -- does -- to your knowledge -- if
10 we're talking about the same sump, and I'm not sure
11 we are.

12 A. Okay.

13 Q. But if we are, do you know if during the
14 steaming process is -- is anything released out of
15 that sump?

16 MR. MANGO: Objection, your Honor. I
17 don't know what sump we're talking about.

18 THE COURT: Yeah. Sustained.

19 BY MR. PERSONIUS:

20 Q. Well, you're describing a sump that you know
21 about that's located on Broadway?

22 A. Yes.

23 Q. Okay. Tell us where on Broadway it's located,
24 please.

25 A. Right -- right across almost from the operating

1 booth for the -- for the by-products operator.

2 Q. Okay. All right. So it's -- it's -- it's
3 across from by-products?

4 A. Yes, it's across -- it's on our side of the
5 road.

6 Q. And the purpose of the sump is what again?

7 A. To -- you can pump out the moisture. It's like
8 a -- like a drip. When that -- that -- instead of
9 sending the water and the moisture and everything
10 through the coke oven gas to the battery, it drops
11 out there and we can pump it out.

12 Q. You pump it out into -- into what?

13 A. There's a little receptacle there that runs
14 over into 6 sump back to the BP.

15 Q. Okay. You say "a little receptacle."

16 A. Yes.

17 Q. I'm not sure what you mean by that.

18 A. It's -- it's -- we use a steam siphon and it
19 looks like -- almost like a little funnel. It runs
20 down to a line going to the by-products, to six up
21 in the by-products.

22 Q. Okay. When you're steaming out -- to your --
23 in your experience, when you're steaming out the
24 lines or the valves to get rid of the naphthalene,
25 does any of that naphthalene ever spray out -- out

1 of the valve that's being cleaned or out of the
2 sump that you've referred to?

3 A. If you're getting gas pressure through, yes, a
4 little will spray out at you.

5 Q. And you've told us that you've worked in the
6 battery for quite some while, correct?

7 A. Yeah.

8 Q. When you're working in the -- the battery, is
9 there any requirement regarding the use of a
10 respirator?

11 A. Yes.

12 Q. Okay. Would you tell the jury what that is,
13 please?

14 A. Any time you're in a regulated area, which
15 would be the benches, top side, you are required to
16 wear a respirator by OSHA.

17 Q. What -- are there different kinds of
18 respirators?

19 A. There are. Most of us use a particulate up
20 there.

21 Q. Would you explain to the jury what that is?

22 A. It takes the particles. It's not more -- it's
23 not so much for gas or anything. It's more for the
24 particulate that's in the air.

25 Q. Okay. And does Mark Kamholz from time to time

1 come down to the battery area?

2 A. Yes, he does.

3 Q. And when he comes down to the battery area, is
4 he required to wear a respirator?

5 A. He's required to -- everybody who comes up in a
6 restricted area.

7 Q. Have you seen Mark around the plant with one of
8 these respirators around his neck before?

9 A. Before, yes. Yes, I have.

10 Q. All right.

11 MR. PERSONIUS: Your Honor, can I have a
12 minute, please.

13 THE COURT: Sure.

14 MR. PERSONIUS: One other area, Judge --

15 THE COURT: Sure.

16 MR. PERSONIUS: -- I'll probably have some
17 questions.

18 BY MR. PERSONIUS:

19 Q. Mr. Brossack, you've referred to the fire that
20 took place in the location of the two abandoned
21 tanks?

22 A. Yes.

23 Q. When did that fire happen again, if you
24 remember?

25 A. 2008.

1 Q. During the summer?

2 A. It was -- it was nice weather. I'd say late
3 summer, maybe early fall.

4 Q. Okay. And -- and you've told the jury that it
5 took three hours to -- to put the fire out?

6 A. That's my estimate, yeah.

7 Q. Okay. And was that three hours of active
8 fire-fighting, or is that three hours what it took
9 to get the -- the equipment there, to get a source
10 of water? In other words, was the whole three
11 hours the active fire-fighting or was there -- were
12 there other things going on?

13 A. I believe that was the active fire-fighting,
14 yes.

15 Q. So your recollection is it took a full three
16 hours of active fire-fighting to put out the fire?

17 A. For the fire department to put it out, yes.

18 Q. Okay. Do you remember if there were problems
19 with the -- the fire companies getting a source for
20 water?

21 A. They had to -- my understanding was they had to
22 run the hoses up our plant road and use various
23 pumpers to get the pressure up.

24 Q. Okay. But your recollection is that that would
25 not have been part of -- that effort would not have

1 been part of this three hours you're referring to?

2 A. I don't believe so, no.

3 Q. Okay. all right.

4 MR. PERSONIUS: Thank you, Judge.

5 Thank you, Mr. Brossack.

6 THE COURT: Okay, Mr. Personius, thank
7 you.

8 MR. PERSONIUS: You're welcome.

9 THE COURT: How are you holding up? Okay?

10 THE WITNESS: I'm fine, sir.

11 THE COURT: All right. Good.

12 Mr. Linsin.

13 MR. LINSIN: Thank you, your Honor. May I
14 proceed?

15 THE COURT: Certainly.

16 CROSS-EXAMINATION BY MR. LINSIN:

17 Q. Good afternoon, Mr. Brossack.

18 A. Good afternoon. How are you?

19 Q. I'm well, thanks.

20 The fire that you were just testifying about,
21 fire in the summer of 2008 --

22 A. Yes.

23 Q. -- were you involved in the fire-fighting
24 efforts yourself?

25 A. We tried. I tried, yes.

1 Q. All right. Before the fire department arrived,
2 is that correct?

3 A. Yes.

4 Q. So you were up in the vicinity of the tanks --

5 A. Yes.

6 Q. -- and the tar that was on the ground --

7 A. Yeah.

8 Q. -- is that correct?

9 And were you using equipment yourself,
10 fire-fighting equipment?

11 A. Just a fire extinguisher. That's all I had.

12 Q. And you and your -- your co-workers were not
13 successful in containing the fire?

14 A. No, we weren't.

15 Q. How long did you stay up in the vicinity of the
16 tanks to try and fight the fire?

17 A. I really couldn't tell you. I really don't
18 know how long I was standing there.

19 Q. Is it fair to say that over the course of the
20 three hours that you were just testifying about,
21 that you, perhaps not continuously, but made
22 observations periodically as this fire-fighting
23 effort was going on?

24 A. Yes.

25 Q. All right. And you were shown two pictures on

1 your direct examination, I believe Government's
2 Exhibit 125.02 and 125.03.

3 May I please have Government Exhibit 125.04
4 marked for identification called up?

5 I ask you to take a look at this exhibit,
6 Mr. Brossack, and just state whether you can
7 identify it.

8 A. Yes, sir, I can.

9 Q. And does this photograph fairly and accurately
10 represent part of the scene that you observed in?

11 A. The vicinity of the Barrett tanks during the
12 fire-fighting effort --

13 MR. MANGO: Judge, we have no objection to
14 the -- if counsel is going to move this into
15 evidence, we have no objection.

16 THE COURT: You want it received?

17 MR. LINSIN: Yes. I would request that
18 Government's Exhibit 125.04 then be moved into
19 evidence.

20 THE COURT: All right. Any objection, Mr.
21 Personius.

22 MR. PERSONIUS: No, your Honor.

23 THE COURT: Okay. No objection. 125.04
24 received.

25 MR. LINSIN: And --

1 THE COURT: And may be published.

2 MR. LINSIN: Thank you.

3 (Government's Exhibit 125.04 was received
4 into evidence.)

5 BY MR. LINSIN:

6 Q. Would you describe, please, for the jury what
7 is depicted in this photograph? And first of all,
8 before I ask you that, do you see the date stamp on
9 the bottom right-hand corner of the photograph?

10 A. Yes, I do.

11 Q. And I understand you just testified that this
12 fire may have been in late summer of 2008. But
13 would July 8th of 2008 fit with your recollection
14 of the date of the fire?

15 A. It would fit with the time of year. It was --
16 I remember it was nice and it was hot.

17 Q. All right. Would you describe, please -- first
18 of all, the structure that is on the left-hand side
19 of this photograph, what is that structure?

20 A. This here you're talking?

21 Q. Yes, sir.

22 A. That would be the old pump house. There was a
23 series of pumps in there years ago.

24 Q. All right. And behind the pump house there,
25 the larger structure?

1 A. Is the tank.

2 Q. All right. And there are two larger Barrett
3 tanks, is that correct?

4 A. Yes.

5 Q. And would this be the Barrett tank that was to
6 the western side of the -- the western more tank of
7 the two tanks?

8 A. These aren't the Barrett tanks.

9 Q. Okay. Which tank is that?

10 A. As far as I know, it's just the tar tanks.

11 Q. All right. The tar tanks?

12 A. Yes.

13 Q. This was the tank around which the fire
14 occurred, is that correct?

15 A. Yes.

16 Q. And so is -- of the two tanks, is this the tank
17 to the west or to the east?

18 A. To the west.

19 Q. All right. And the tank that is torn here in
20 the -- in the right-hand side of the photograph, do
21 you -- or the structure that is torn, do you know
22 what that is?

23 A. That's an old tank car, an old tank railcar.

24 Q. And the area around the tank, is this in the
25 aftermath of the fire, as best you recall?

1 A. Yes.

2 MR. LINSIN: Could I have then
3 Government's Exhibit 125.06 that has been marked
4 for identification. My questions would be the same
5 and --

6 MR. MANGO: We -- we will not object --

7 MR. LINSIN: All right.

8 MR. MANGO: -- your Honor.

9 THE COURT: Okay. 125.06 received. No
10 objection.

11 (Government's Exhibit 125.06 was received
12 into evidence.)

13 THE COURT: And may be published.
14 Mr. Personius?

15 MR. PERSONIUS: No objection, judge. No
16 objection. Thank you.

17 MR. LINSIN: And is it accurate to say
18 that this is a more zoomed in photograph capturing
19 components that were also depicted in the last
20 photograph?

21 THE WITNESS: Yes.

22 MR. LINSIN: All right. And next, your
23 Honor, may I have Government's Exhibit 125.01
24 marked for identification?

25 Again, my questions would be the same. And

1 barring objection --

2 MR. MANGO: No objection, your Honor.

3 MR. LINSIN: All right.

4 THE CLERK: 125.01, I have it in.

5 THE COURT: I don't.

6 MR. LINSIN: I did not have that as in,
7 your Honor.

8 THE COURT: Okay. I think we're -- well,
9 it is now. No objection.

10 MR. PERSONIUS: No objection.

11 MR. LINSIN: All right.

12 THE COURT: All right.

13 (Government's Exhibit 125.01 was received
14 into evidence.)

15 BY MR. LINSIN:

16 Q. And would you describe, please, what's depicted
17 in this photograph?

18 A. Again, the old pump house and -- and the tank.

19 Q. All right. The -- the tank to the west of the
20 two large tanks, correct?

21 A. Yes.

22 Q. Now, you've been at the plant, you testified,
23 since '81, correct?

24 A. Yes.

25 Q. During the time you were at the plant, between

1 1981 and the end of 2009, did Tonawanda Coke ever
2 have anything to do with putting material into any
3 of these tanks?

4 A. No. To my knowledge, no.

5 Q. And from your earliest observations of these
6 tanks, is it fair to say that the tanks were in
7 general disrepair, in poor condition?

8 A. Yes.

9 Q. And did you, again, from your earliest
10 observations, note that there were, in fact, holes
11 near the base of particularly this tank?

12 A. Yes.

13 Q. All right. And is it also accurate to say that
14 from your earliest years of working at the plant,
15 you had seen that some of the contents that had
16 been in the tank, this storage tank, had actually
17 leaked on to the ground in the area around the
18 tank?

19 A. Yes.

20 Q. All right. You testified on direct that in, I
21 believe it was approximately 1994, that you had
22 seen that some raw coke breeze that actually had
23 been spread onto the area in the vicinity of these
24 tanks, is that correct?

25 A. Yes, I did.

1 MR. LINSIN: Your Honor, may I retrieve an
2 exhibit?

3 THE COURT: Certainly.

4 MR. LINSIN: May I approach the witness,
5 your Honor?

6 THE COURT: Yes.

7 BY MR. LINSIN:

8 Q. Mr. Brossack, I have placed before you a jar
9 that has been marked as Defendant's Exhibit KKKK.
10 I ask you to take a look at the contents of that
11 jar and tell us whether you can identify what's
12 inside of it.

13 A. It appears to be raw breeze.

14 Q. And is that similar to the material that you
15 had seen spread in this area around the tank back
16 in the mid '90s as you testified?

17 A. Yes.

18 MR. LINSIN: Your Honor, may I briefly
19 publish this to the jury?

20 THE COURT: Yes. Is there any objection?

21 MR. MANGO: No, your Honor.

22 THE COURT: Triple -- KKKK, is that what
23 you said?

24 MR. LINSIN: Yes, sir.

25 THE COURT: Okay.

1 MR. LINSIN: It is -- it was a new exhibit
2 just marked today, your Honor. And if there was no
3 objection from the government, we will supplement
4 our exhibit list.

5 MR. PIAGGIONE: We have no objection to
6 that --

7 THE COURT: Okay.

8 MR. PIAGGIONE: -- your Honor.

9 MR. LINSIN: Your Honor, if this is --

10 THE COURT: It's received into evidence,
11 yes. No objection?

12 MR. MANGO: No, your Honor, none.

13 THE COURT: Okay.

14 (Defendants' Exhibit KKKK was received
15 into evidence.)

16 BY MR. LINSIN:

17 Q. Now, during the entire time that you were
18 attempting to fight the fire in this area and
19 around observing the efforts of the fire department
20 personnel to extinguish the fire, is it accurate to
21 say that you at no time saw any of the contents of
22 this tank or the other tank actually seep out
23 outside of the tank?

24 A. No, I didn't see that.

25 Q. All right. The material that you see depicted

1 in these photographs, water, of course, has been
2 added in the process, but the material otherwise
3 that you see depicted here, as best you understood,
4 was there before this fire even started, is that
5 correct?

6 A. Yes.

7 MR. LINSIN: Your Honor, if this is,
8 perhaps, a convenient time to break for lunch. I
9 do have a couple of other areas, but -- I'm happy
10 to go forward if the Court wishes.

11 THE COURT: About how long?

12 MR. LINSIN: Ten minutes. 15 max.

13 THE COURT: Let's finish up --

14 MR. LINSIN: All right.

15 THE COURT: -- Mr. Brossack, unless you
16 prefer to come back.

17 THE WITNESS: No.

18 THE COURT: No? Why does that not
19 surprise me, Mr. Brossack?

20 THE WITNESS: I'm sorry.

21 THE COURT: Ladies and gentlemen, are you
22 okay? Can you hang in there for ten more minutes
23 or so? Okay.

24 BY MR. LINSIN:

25 Q. Now, you were asked some questions on direct

1 examination regarding the baffles -- I'm sorry --
2 the quench towers and quench stations.

3 A. Yes, sir.

4 Q. Now, in the time that you worked in coal
5 handling, in the time that you worked up on the
6 batteries, you saw the -- quite a number of
7 quenching operations over the years, is that a fair
8 statement?

9 A. Yes, I have.

10 Q. All right. And you never actually operated
11 that -- the locomotive that moves the car, did you?

12 A. Yes, I have.

13 Q. Oh, you have?

14 A. Yes, I have.

15 Q. How long did you do that?

16 A. Every once in a while you fill in for one of
17 the hourlies. Maybe he had something he had to do,
18 and you'd catch the oven for him or go down. Or
19 maybe if the operator didn't -- didn't quench the
20 load quite correctly, you would take it down and --
21 or I would take it down and requench it to make
22 sure it didn't burn the car up.

23 Q. All right.

24 A. But it wasn't an everyday sort of thing. I
25 mean, I was qualified to operate it, but I didn't

1 operate it every day.

2 Q. Okay. And is it fair to say, Mr. Brossack,
3 that in -- in your experience, based on all the
4 time that you spent on the battery, operating
5 the -- that locomotive yourself, and observing
6 others do it, that it was quench tower number 2,
7 that quench tower to the east side of the property
8 that was used predominantly to quench the coke
9 after it came out of the oven, correct?

10 A. Yes.

11 Q. And quench tower number 1, the taller quench
12 tower that's on the west side, was used from time
13 to time especially during the winter to prevent the
14 pipes from freezing, correct?

15 A. Correct.

16 Q. And even in times of high production when you
17 had more quenching operations, quench tower number
18 1 was not used that frequently, as best you recall,
19 is that correct?

20 A. No, not that frequently, no.

21 Q. All right. Now, you've testified about
22 pressure in the system in connection with your
23 testimony about the PRV.

24 A. Yes.

25 Q. Plant pressure, you called it, I believe?

1 A. Yes.

2 Q. Now, the pressure you're talking about when you
3 discuss that pressure, is the pressure that is in
4 the coke oven gas line downstream of the
5 exhausters, correct?

6 A. Yes.

7 Q. There is -- from the collector main on the
8 battery over to the exhausters and by-products,
9 there is actually suction on the line, correct?

10 A. Yes, there is.

11 Q. But now there is a separate measurement of
12 pressure, gas pressure for the ovens themselves,
13 correct?

14 A. The back pressure, yes.

15 Q. And would you describe, please, what the back
16 pressure is on the -- on the ovens?

17 A. How much -- excuse me -- how much battery
18 pressure -- I'm sorry, back pressure that you --
19 how much gas pressure you hold on the battery
20 itself, on the ovens themselves.

21 Q. And how is that back pressure on the ovens
22 controlled?

23 A. By the escania-s on number 1 and number 2
24 crossover.

25 Q. There are two crossovers -- coke oven gas line

1 crossovers that lead from the battery to
2 by-products, correct?

3 A. Yes.

4 Q. Is it your understanding that each of those
5 crossovers has a separate control device, escania,
6 if you will --

7 A. Yeah.

8 Q. -- that controls back pressure for a certain
9 number of ovens, is that correct?

10 A. Yes.

11 Q. All right. And how is that back pressure
12 adjusted?

13 A. Depending on your production.

14 Q. All right.

15 A. How much -- depending on production would be --
16 at a low -- at a low production level you would
17 want a higher back pressure. You don't want to be
18 dry -- sucking the gas, not only the gas, but you
19 will actually start sucking air into the ovens and
20 you don't want that.

21 Q. You don't want air in the ovens?

22 A. No.

23 Q. My question was a poor one. Mechanically, how
24 do you adjust the back pressure on the ovens?

25 A. I'm sorry. There's -- there's set points. You

1 can set -- with the new controllers you can set --
2 electronically set them --

3 Q. All right.

4 A. -- to where you want the back pressure.

5 Q. Well, before the new controllers were in place,
6 were there control devices that you could also set?

7 A. Yes.

8 Q. And they were -- those pressure settings were
9 recorded on another one of these circular charts,
10 is that correct?

11 A. Yes. Yes.

12 Q. Now, do you remember from a time, from, say,
13 2005 through 2009, do you remember a gentleman by
14 the name of Tom Bermingham that worked as a
15 consultant for Tonawanda Coke?

16 A. Yes, I did.

17 Q. And do you know why he was asked to come in and
18 serve as a consultant for the company?

19 A. No, I don't.

20 Q. Did you come to learn that Mr. Bermingham and
21 other company managers had -- had decided that it
22 was important from an operational standpoint that
23 high back pressure be maintained on the ovens?

24 A. He told us that, yes.

25 Q. All right. And did you understand why it was

1 that Mr. Bermingham told you that he wanted high
2 back pressure on the ovens?

3 A. He said it was to build roof carbon.

4 Q. I'm sorry?

5 A. Build roof carbon.

6 Q. All right.

7 A. To build up the carbon to try to seal the oven.

8 Q. All right. And when you say "build up roof
9 carbon" or "carbon inside the ovens", the concept
10 was that, at least in Mr. Bermingham's
11 understanding, with a higher back pressure you
12 would build up carbon on the interior walls of the
13 oven, is that correct?

14 A. Up at the roofs, yes.

15 Q. That would help seal cracks in those ovens that
16 might otherwise permit coke oven gas to escape,
17 correct?

18 A. Yes.

19 Q. And might permit coke oven gas to escape into
20 the waste heat vents, correct?

21 A. Yes.

22 Q. All right. Now, do you recall that from the
23 time period I just described, from 2005 to 2009,
24 that there was a program in place to slowly raise
25 the back pressure on the ovens over time from --

1 from 6 millimeters to 6.5 to 7.5? Do you recall
2 that?

3 A. Yes, I do.

4 Q. All right. And so we're clear, when we say
5 "millimeters", can you describe what that
6 measurement references? Do you know?

7 A. It just -- we use it as an -- as an indication
8 of the pressure on the battery.

9 Q. And is -- would that be millimeters of water in
10 a -- in a column?

11 A. I'm not sure if we use water or kerosene up
12 there.

13 Q. All right. But it's -- it's pressure
14 created -- static pressure created --

15 A. Yes.

16 Q. -- by a column of fluid of some sort?

17 A. Yes.

18 Q. All right. And -- and you measure this back
19 pressure in millimeters, correct?

20 A. Yes.

21 Q. And so you recall that over this time period
22 we're talking about, that Mr. Bermingham and other
23 managers of the company were talking to the battery
24 workers to ensure that this back pressure was
25 elevated periodically, correct?

1 A. Yes.

2 Q. And that process of elevating back pressure
3 created certain challenges for the battery crew
4 members, correct?

5 A. Yes.

6 Q. And some of those challenges is that an
7 increased back pressure put a much higher priority
8 on the need to carefully seal the ovens, correct?

9 A. Yes.

10 Q. And to seal the oven doors, correct?

11 A. Yes.

12 Q. And it's accurate to say, isn't it, that, in
13 your experience, some of those battery foremen,
14 some of those workers whose jobs it was to ensure
15 that these ovens were sealed, actually resisted
16 these efforts to increase the back pressure and
17 would actually go out and lower the back pressure
18 from time to time?

19 MR. MANGO: Objection, your Honor, to
20 asking about what other people would do.

21 THE COURT: Yeah, I think there was some
22 flaws in the question. I'll sustain the objection.

23 BY MR. LINSIN:

24 Q. Mr. Brossack, did you ever adjust the back
25 pressure down?

1 A. Yes.

2 Q. Why did you do that?

3 A. To help out the 303 numbers.

4 Q. And when you say "to help out the 303 numbers",
5 are you referring to the daily air act inspections
6 that were required by regulations --

7 A. Yes.

8 Q. -- to monitor emissions from the ovens?

9 A. Yes.

10 Q. And when you adjusted the back pressure
11 downward, you understood that you were doing
12 something that was contrary to the directions that
13 had been given you by Mr. Bermingham and other
14 managers of the company, correct?

15 A. Yes.

16 Q. Based on your personal observations, did you
17 see other battery personnel sometimes lower the
18 back pressure?

19 A. I never physically saw it, no.

20 Q. Now, sometimes you and Mr. Priamo -- you
21 mentioned Mr. Priamo's name earlier --

22 A. Yes.

23 Q. What position did he have?

24 A. He was head heater.

25 Q. All right. On the battery?

1 A. Heater.

2 Q. I'm sorry. He was the head heater on the
3 battery?

4 A. Yes.

5 Q. Sometimes you and Mr. Priamo would actually
6 lower the back pressure for necessary operational
7 reasons, but then you would notify the 303
8 inspector, correct?

9 MR. MANGO: Objection, your Honor.

10 THE COURT: Grounds?

11 MR. MANGO: Ambiguous as to referring to
12 both him and Mr. Priamo. The question was earlier
13 asked whether he changed the back pressure and he
14 said yes. Now Mr. Priamo is added to the mix.

15 THE COURT: All right. It's compound, I
16 guess is what you're saying. I sustain it.

17 Reput it, please.

18 BY MR. LINSIN:

19 Q. Were there times, Mr. Brossack, that you
20 reduced the back pressure, but for legitimate
21 reasons, and then notified the 303 inspector you
22 had done so?

23 A. Yes.

24 Q. All right. Were there times you observed
25 Mr. Priamo do exactly the same thing?

1 A. Yes.

2 MR. LINSIN: I have nothing further, your
3 Honor. Thank you.

4 THE COURT: Okay. Mr. Linsin, thank you.
5 Any redirect?

6 MR. MANGO: Yes, your Honor. I will try
7 to do this in five minutes or less.

8 THE COURT: Sure.

9 MR. LINSIN: May I retrieve my exhibit?

10 THE COURT: You sure you want it? Okay.
11 Where did you have that? Was that in your
12 briefcase?

13 MR. LINSIN: It was, your Honor.

14 THE COURT: Thank you. I don't think
15 we've seen it before.

16 MR. LINSIN: It being my first physical
17 exhibit, your Honor, where shall we -- where shall
18 this live?

19 THE CLERK: In your possession.

20 THE COURT: Okay. Please, Mr. Mango.
21 Thank you.

22 MR. MANGO: Thank you, your Honor.

23 REDIRECT EXAMINATION BY MR. MANGO:

24 Q. In your opinion, Mr. Brossack, could the ovens
25 at Tonawanda Coke handle the higher back pressure

1 recommended by Mr. Bermingham?

2 A. In my opinion?

3 Q. Yes.

4 A. No.

5 Q. Okay. Why not?

6 A. Because our 303 numbers were just going up way
7 too much.

8 Q. How many times did you lower the back pressure
9 in an attempt to help your 303 numbers?

10 A. I did it once, but I didn't do it right, so I
11 didn't bother with it again.

12 Q. Okay. Are you required by OSHA, if you know,
13 to wear a respirator on Broadway near the
14 by-products area?

15 A. No.

16 Q. When you were attempting to extinguish the fire
17 around these two abandoned tar tanks, as you
18 mentioned --

19 A. Yes.

20 Q. -- was there a lot of smoke produced?

21 A. Yes, there was.

22 Q. Okay. Were there times when the number 2
23 quench tower was down for an extended period of
24 time?

25 A. Number 2 quench station, yes.

1 Q. Okay. And when the number 2 quench station was
2 down, where -- where did the quenches happen?

3 A. We had to use number 1.

4 Q. Okay. In -- in Defendant Kamholz's position, I
5 think as you testified as environmental manager --

6 A. Yes.

7 Q. -- would you believe that Defendant Kamholz
8 would have knowledge of whether a pilot light on
9 the battery flare was required under the
10 regulation?

11 MR. LINSIN: Objection, your Honor.

12 MR. PERSONIUS: Objection to what this
13 witness's understanding of Mr. Kamholz's
14 understanding of a regulation.

15 MR. MANGO: Your Honor, he was asked on
16 cross-examination about his knowledge of
17 Mr. Kamholz's job.

18 THE COURT: So whether or not the pilot
19 light on the battery was required under the regs?

20 MR. MANGO: Yes.

21 THE COURT: Do you understand?

22 THE WITNESS: Do I know if it was
23 required?

24 THE COURT: Yes or no.

25 THE WITNESS: Yes.

1 THE COURT: All right. Overruled.

2 I'll -- yeah, go ahead.

3 MR. LINSIN: Your Honor, if this witness
4 is testifying about his knowledge of the
5 requirements, that is one thing. Asking this
6 witness to testify about someone else's knowledge
7 is problematic.

8 THE COURT: Yeah, I think -- it was his
9 knowledge, right, whether he knows?

10 MR. LINSIN: No.

11 MR. PERSONIUS: No. He was asking about
12 Mr. Kamholz's.

13 THE COURT: Okay. Then I'm sorry. All
14 right.

15 MR. MANGO: I'll rephrase.

16 THE COURT: Reput the question, please.

17 MR. MANGO: Yeah.

18 THE COURT: Thank you. Objection
19 sustained, then.

20 BY MR. MANGO:

21 Q. Mr. Brossack, did you have knowledge as to
22 whether a pilot light was required under the
23 regulations for the battery flare stack?

24 A. Yes.

25 Q. Okay. And what was your knowledge of the

1 requirement?

2 A. That it had to be operational all the time.

3 Q. Okay.

4 A. So if you did have to beehive the battery, it
5 was burned off.

6 Q. Now, in -- in Defendant Kamholz's position,
7 based on what you've seen him do and his job
8 duties, do you believe that he would have known
9 about that regulation?

10 MR. PERSONIUS: Your Honor, I object.

11 MR. LINSIN: Objection, your Honor.

12 THE COURT: Yeah, sustained.

13 MR. MANGO: Nothing further, your Honor.

14 THE COURT: Okay. Any additional
15 questions?

16 MR. PERSONIUS: No, Judge.

17 MR. LINSIN: Just one.

18 RECROSS-EXAMINATION BY MR. LINSIN:

19 Q. Mr. Brossack, you said -- you testified, I
20 believe, that in the entire time you have or had
21 been at Tonawanda you recall this bee-hiving
22 occurring eight or nine times, is that correct?

23 A. Yes.

24 MR. MANGO: Objection, your Honor. This
25 goes beyond the scope of redirect.

1 THE COURT: Well --

2 MR. MANGO: We didn't talk about
3 bee-hiving.

4 THE COURT: I don't know. No, you didn't,
5 but is this relating to redirect?

6 MR. LINSIN: It does, your Honor.

7 THE COURT: All right. I'll let you try
8 it.

9 BY MR. LINSIN:

10 Q. When the flare -- when a bee-hiving occurred,
11 was gas released through this battery flare
12 automatically, or did something have to happen
13 mechanically before gas was released through the
14 battery flare?

15 A. No, we've got a big manual valve we have to
16 open up.

17 Q. All right. And so no gas is released until
18 that manual valve is opened, is that correct?

19 A. Correct.

20 MR. LINSIN: Nothing further, your Honor.

21 THE COURT: Thank you.

22 Anything, Mr. Mango?

23 MR. MANGO: No, thank you, your Honor.

24 THE COURT: Mr. Personius?

25 MR. PERSONIUS: Thank you, no, Judge.

1 THE COURT: Okay. Mr. Brossack, you're
2 excused, sir.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Appreciate it.

5 All right. How's the jury doing? Getting a
6 little hungry? Okay. Would any of you like to go
7 to lunch? Would all of you like to go to lunch?
8 Okay. Get back here about 2:15, okay? Not before
9 then.

10 All right. Thank you for your attention.
11 Please don't discuss the case. Don't make up your
12 minds. Keep your minds open. And we'll continue
13 at approximately 2:15. Thank you. Have a good
14 lunch.

15 (Jury excused from the courtroom.)

16 THE COURT: Okay. Anything we have to
17 discuss? We're good?

18 MR. MANGO: No, your Honor.

19 THE COURT: Do you know who your next
20 witness is?

21 MR. MANGO: Martha Hamre from Denver,
22 Colorado, from the EPA.

23 THE COURT: Okay. All right. We will see
24 you at 2:15. All right.

25 MR. MANGO: Thank you very much.

1 (Lunch recess was taken.)

2 (Jury not present in the courtroom.)

3 MR. MANGO: Judge, before the jury comes
4 out can I raise an issue?

5 THE COURT: Sure.

6 MR. MANGO: I was walking in -- I had to
7 run to my office to get something. As I was coming
8 in -- and I've already informed defense counsel of
9 this.

10 THE COURT: Please have a seat.

11 MR. MANGO: -- my head was down, and Juror
12 No. 7 held the door for me. And as I was walking
13 into the courthouse, he asked me, "Is the person in
14 the gallery Adam Buchbinder?"

15 Adam, if you would just raise your hand.

16 Adam is a new EPA agent who recently
17 transferred in from Chicago. He's been here in
18 Buffalo maybe about a month. And I simply said,
19 "Yes, it is him, and I'm going to make sure I bring
20 this to the judge's attention."

21 I've asked Adam separately how they knew each
22 other. Apparently about ten years ago they were
23 friends in high school, but haven't had really any
24 contact after that.

25 THE COURT: Okay. Is Agent Buchbinder

1 going to testify?

2 MR. MANGO: No. He's not a witness.

3 THE COURT: Okay.

4 MR. MANGO: All right.

5 THE COURT: Is there anything that the
6 defense wants me to do?

7 MR. LINSIN: I don't think any further
8 inquiry is necessary, your Honor. Can I just ask
9 through the Court again what the -- what the
10 question itself was from the juror?

11 THE COURT: I think it was, "Is that Adam
12 Buchbinder?" Right?

13 MR. MANGO: He said his name. "Is that
14 Adam Buchbinder?" And I responded, "Yes. And I'm
15 going to need to raise this to the judge's
16 attention."

17 MR. LINSIN: But no indication that he
18 knew he was working for the EPA or anything like
19 that.

20 MR. MANGO: No.

21 MR. LINSIN: All right. I have nothing,
22 your Honor. Okay.

23 MR. PERSONIUS: Your Honor. Forgive me,
24 your Honor. I thought that -- that it was
25 connected with EPA. It wasn't? The question from

1 the juror.

2 MR. MANGO: He asked me specifically, "Is
3 that Adam Buchbinder?" He did not say, "Is that
4 Adam Buchbinder with EPA?" He just asked me if
5 that was Adam Buchbinder.

6 THE COURT: And he said to you that they
7 were friends ten years ago.

8 MR. MANGO: That's what I got from Adam.
9 I didn't want to inquire of the juror. So when I
10 got back up to the office I asked Adam, and that's
11 what he told me.

12 THE COURT: Okay. Okay. I think
13 that's -- I'm sorry. Go ahead.

14 MR. LINSIN: The only -- I'm sorry to
15 interrupt, your Honor. The only question I would
16 ask, given this, I can understand why Special Agent
17 Buchbinder might have an interest in observing the
18 case. Unfortunately, I guess my request would be,
19 given this development, I don't think -- I would
20 request that the government speak to Mr. Buchbinder
21 about perhaps not continuing to attend the trial,
22 just because now that we've established there's
23 some relationship. The only concern I would have
24 is if Mr. Buchbinder continued to show up at trial
25 for some reason, that, I guess, as I think about

1 it, would potentially be somewhat problematic.

2 MR. MANGO: Your Honor, I defer to the
3 Court. He was planning to be here during trial.
4 He's -- he helps us with logistics and witnesses.
5 But we'll defer to the Court on this one.

6 THE COURT: Why don't I call up Bauman,
7 all right? And I can talk to him here at side bar.

8 MR. LINSIN: Okay.

9 THE COURT: All right. And then -- I
10 don't think that will present a problem from his
11 standpoint, and I'll find out if there's anything
12 about his continued presence that would cause him
13 concern. If he even knows where he's employed,
14 that kind of thing. Okay?

15 MR. LINSIN: That would be fine, your
16 Honor. And just so that we're not -- the only
17 other point I would raise before the jury comes
18 back out is there are two additional stipulations
19 that I had hoped to read into evidence during the
20 last witness's testimony. They were not executed
21 until over lunch, and I would request the Court's
22 indulgence to read them before the first witness is
23 brought to the stand. They will be very brief.

24 THE COURT: Okay. All right. I take it,
25 Mr. Personius, no problem with that?

1 MR. PERSONIUS: None, your Honor. Thank
2 you.

3 THE COURT: Okay. And --

4 MR. MANGO: None, your Honor.

5 THE COURT: Mr. Mango?

6 MR. MANGO: Nope. We signed them.
7 They're ready to go.

8 THE COURT: Okay. Chris, please.

9 (Jury seated.)

10 THE COURT: Mr. Bauman, can I see you for
11 a second, please?

12 Okay. Please have a seat. Good to see
13 everybody.

14 (Side bar discussion held on the record
15 between the Court and Juror number 7.)

16 THE COURT: Adam Buchbinder.

17 A JUROR: Yes.

18 THE COURT: That is him.

19 A JUROR: I thought I recognized him.

20 THE COURT: You recognize the individual,
21 right?

22 A JUROR: Yes.

23 THE COURT: Is it a friend of yours from
24 awhile back?

25 A JUROR: From high school, yeah.

1 THE COURT: And where was that? What high
2 school?

3 A JUROR: Saint Francis.

4 THE COURT: And have you had any
5 relationship with him over the last ten years or
6 so?

7 A JUROR: Yeah. We've played hockey after
8 high school.

9 THE COURT: Do you know what he does?

10 A JUROR: Last I heard he was in South
11 Carolina.

12 THE COURT: Doing what?

13 A JUROR: Some government agency.

14 THE COURT: You don't know which one or
15 anything?

16 A JUROR: No. I'm assuming EPA since he's
17 here, but --

18 THE COURT: Okay. The fact that he's with
19 EPA, does that make a difference to you, if he's
20 not a witness?

21 A JUROR: No.

22 THE COURT: Would you be more comfortable
23 if he weren't here?

24 A JUROR: No. I didn't know if he was a
25 witness or if he's an investigator with the case.

1 THE COURT: Okay. All right. Do you know
2 where he lives or --

3 A JUROR: No.

4 THE COURT: You haven't seen him for ten
5 years or so or since you played hockey together?

6 A JUROR: I seen him when he came home to
7 visit. I mean, I would run into him at Sabre
8 games.

9 THE COURT: And would you consider him to
10 be a continuing good friend?

11 A JUROR: A friend. I mean, obviously we
12 haven't stayed in contact.

13 THE COURT: Okay. Because it really comes
14 down to a question of whether I keep him and allow
15 him to watch the trial or not. But if there's any
16 risk whatsoever that you would be distracted or
17 feeling a little less comfortable, then probably
18 the answer is I should ask him not to spend the
19 day. So you have to tell me if it makes you at
20 least in any way uncomfortable.

21 A JUROR: No.

22 THE COURT: Okay. And you know he is an
23 employee of EPA?

24 A JUROR: Uh-huh.

25 THE COURT: Yes?

1 A JUROR: Yeah.

2 THE COURT: Okay. That's because it has
3 to get recorded that way.

4 A JUROR: Okay.

5 THE COURT: And you feel you can still be
6 fair and impartial to both sides?

7 A JUROR: I would try my best.

8 THE COURT: Okay. Any doubt about that?

9 A JUROR: Uh -- no.

10 THE COURT: Okay. And things haven't
11 changed in your mind since you saw him in the
12 courtroom?

13 A JUROR: No.

14 THE COURT: Okay. You know, I appreciate
15 the fact that you let the prosecutor know, because
16 you just inadvertently bumped into him -- right? --
17 at the lunch hour?

18 A JUROR: The prosecutor?

19 THE COURT: Yes. And you mentioned to
20 him --

21 A JUROR: Yeah. I was planning to mention
22 it to Chris.

23 THE COURT: Okay. All right. Thank you.
24 If you have a change of heart, you let me know.

25 A JUROR: Okay.

1 THE COURT: Change of mind, okay?

2 A JUROR: Okay.

3 THE COURT: You're comfortable continuing
4 as a juror?

5 A JUROR: Yeah.

6 THE COURT: Okay. Thank you.

7 (End of side bar.)

8 THE COURT: Okay. In case you're
9 wondering, we did not fire Mr. Bauman. And welcome
10 back. I hope you had a good lunch, and I think
11 we're ready to go.

12 There is a little wrap-up that probably makes
13 sense to take care of right now, and I think there
14 are two very, very brief stipulations that
15 Mr. Linsin has that he's going to read at this
16 point in time. And remember, the information that
17 you are given, that's the evidence, not the
18 document itself.

19 So, Mr. Linsin, if you will, please.

20 MR. LINSIN: Thank you, your Honor.

21 I'm going to read a document that has been
22 marked Court Exhibit No. 2, with the case caption,
23 and it is entitled Stipulation.

24 The United States of America by and through its
25 attorney --

1 THE COURT: Mr. Linsin, so you -- if you
2 will, please. Thank you.

3 MR. LINSIN: The United States of America,
4 by and through its Attorney, William J. Hochul Jr.,
5 United States Attorney for the Western District of
6 New York, and Ignacia S. Moreno, Assistant Attorney
7 General for the United States Department of
8 Justice, Environment and Natural Resources
9 Division, and the undersigned Assistant United
10 States Attorney and Senior Trial Attorney, and the
11 undersigned counsel for defendants Tonawanda Coke
12 Corporation and Mark L. Kamholz, collectively the
13 defendants, do hereby stipulate and agree to the
14 following fact:

15 "Prior to January 27th, 1978, when Tonawanda
16 Coke Corporation purchased the property and coke
17 production facility at 3875 River Road, Tonawanda,
18 New York, the materials in the two storage tanks
19 that are the subject of the allegations in
20 Counts 17 and 18 had been abandoned by a prior
21 owner of the property; and also prior to
22 January 27th, 1978, some of the material that had
23 been in the two tanks had spread onto the ground in
24 the vicinity of the two tanks."

25 And the stipulation is signed by Mr. Aaron

1 Mango, Assistant United States Attorney, United
2 States Attorney's Office; Rocky Piaggione, Senior
3 Trial Counsel, Department of Justice; by myself,
4 Gregory Linsin, on behalf of Tonawanda Coke, and my
5 partner, Jeanne Grasso, for Tonawanda; Mr. Rod
6 Personius for Defendant Mark Kamholz, and by
7 Mr. Kamholz himself.

8 THE COURT: Okay. So stipulated,
9 government attorneys?

10 MR. MANGO: Yes, your Honor.

11 MR. PIAGGIONE: Yes, your Honor.

12 THE COURT: All right. Mr. Personius?

13 MR. PERSONIUS: Yes, your Honor.

14 THE COURT: Okay. That information, then,
15 ladies and gentlemen is competent evidence by
16 virtue of stipulation, which you may consider in
17 working towards your completed duty of returning a
18 unanimous verdict in this case.

19 MR. LINSIN: The second document I will
20 read has been marked Court Exhibit No. 3. Again
21 captioned with the caption for this case, and
22 entitled Stipulation.

23 "The United States of America, by and through
24 its Attorney, William J. Hochul Jr., United States
25 Attorney for the Western District of New York, and

1 Ignacia S. Moreno, Assistant Attorney General for
2 the United States Department of Justice,
3 Environment and Natural Resources Division, and the
4 undersigned Assistant United States Attorney and
5 Senior Trial Counsel, and the undersigned counsel
6 for defendants Tonawanda Coke Corporation and Mark
7 L. Kamholz, collectively the defendants, do hereby
8 stipulate and agree to the following fact:

9 "After taking possession of the property and
10 coke production facility at 3875 River Road,
11 Tonawanda, New York, on January 27th, 1978,
12 Tonawanda Coke Corporation did not place any of the
13 materials that are the subject of Counts 17 and 18
14 into the storage tanks that are described in those
15 two counts."

16 And this document is also, as with the first,
17 dated today, signed by Mr. Aaron Mango and Rocky
18 Piaggione on behalf of the United States; by myself
19 and Jeanne Grasso on behalf of Tonawanda Coke; and
20 by Mr. Rod Personius and Mark Kamholz.

21 THE COURT: Okay. Thank you, Mr. Linsin.

22 So stipulated, Mr. Mango?

23 MR. MANGO: Yes, your Honor.

24 THE COURT: Okay. Mr. Piaggione?

25 MR. PIAGGIONE: Yes, your Honor.

1 THE COURT: Okay. And Mr. Personius?

2 MR. PERSONIUS: Yes, Judge.

3 THE COURT: Okay. The stipulation will be
4 received into evidence, ladies and gentlemen. The
5 information that's the subject of the stipulation
6 is competent evidence should you choose to consider
7 it and factor it into your deliberations in
8 arriving at an unanimous verdict in this case.

9 Remember the government has the burden of proof
10 beyond a reasonable doubt, and both defendants are
11 presumed innocent until and if proven guilty.

12 Okay. We are about to embark on witness number
13 three. All right. Mr. Mango.

14 MR. MANGO: Yes, your Honor. The
15 government will call Martha Hamre.

16 THE COURT: Okay. Good afternoon. If you
17 would approach the witness stand and stand right
18 about there. Don't enter it. Stay right there.
19 We're going to have you sworn.

20 M A R T H A E L I Z A B E T H H A M R E, having
21 been duly sworn as a witness, testified as follows:

22 THE COURT: Okay. Good afternoon. Get
23 yourself comfortable, please. And arrange the
24 microphone so you speak at it in conversational
25 tone. It's basically pretty friendly, so you just

1 have to not be intimidated by it. Speak into the
2 microphone but not right on top of it.

3 Keep in mind a couple of basic rules. One, if
4 you don't understand a question, ask that it be
5 repeated, whether it's the attorneys or me, and
6 that helps matters a lot.

7 Be as succinct with your answers as you can.
8 If you can answer a question yes or no, please try
9 to do that. If -- if you volunteer information,
10 that becomes a problem, generally speaking.

11 If there's an objection, wait until I rule on
12 the objection. Then I'll tell you whether to
13 answer the question, wait for another question, or
14 similar type instructions. Do you understand?

15 THE WITNESS: Yes.

16 THE COURT: All right. Let's see how
17 you're going to sound on that microphone. State
18 your full name; spell your last name, please.

19 THE WITNESS: Martha Elizabeth Hamre,
20 H-A-M-R-E.

21 THE COURT: Okay, Miss Hamre, thank you.

22 Mr. Mango, your witness.

23 MR. MANGO: Thank you, your Honor.

24 DIRECT EXAMINATION BY MR. MANGO:

25 Q. Miss Hamre, are you currently employed?

1 A. Yes.

2 Q. Can you tell the jury where you are employed?

3 A. I'm employed with the United States
4 Environmental Protection Agency, National
5 Enforcement Investigation Center.

6 Q. Okay. Does that sometimes go by the acronym
7 NEIC?

8 A. Yes.

9 Q. All right. How long have you been employed
10 with NEIC?

11 A. I've been employed for just over 14 years.

12 Q. And what are your duties at NEIC?

13 A. My primary duties are to coordinate and conduct
14 single-media and multimedia inspections at various
15 types of industrial facilities.

16 Q. What -- all right. First off, do you have a
17 job title?

18 A. Yes. I'm a chemical engineer.

19 Q. All right. You mentioned for the jury
20 single-media and multimedia. Is this some type of
21 audiovisual presentation, or why don't you tell the
22 jury.

23 A. Single -- in the EPA there's air, water,
24 hazardous waste. Those would be three of the main
25 medias that you might inspect, and we might do a

1 Clean Air Act investigation, which was the case
2 here, or we might do an investigation that covered
3 multiple -- air, water, and waste or any
4 combination.

5 Q. Okay. Approximately how many on-site
6 inspections have you participated in during your
7 employment with NEIC?

8 A. Eighty to a hundred.

9 Q. And how many of those prior inspections
10 included a coke production facility?

11 A. Three other ones prior to this.

12 Q. Prior to -- we're going to talk about one at
13 the Tonawanda Coke Corporation.

14 A. Yes.

15 Q. So prior to that you had three?

16 A. Yes. Three.

17 Q. Okay. What other duties do you have as a
18 chemical engineer with NEIC?

19 A. We provide technical consultation. There's ten
20 EPA regions across the country. We'll provide
21 consultation to them. We also -- I also write
22 reports documenting the inspections that I conduct.
23 But my primary duty is to conduct inspections.

24 Q. All right. You mentioned there's ten different
25 regions. What region does Western New York fall

1 into?

2 A. That would be EPA Region 2.

3 Q. Are they headquartered out of anywhere?

4 A. New York City.

5 Q. Now, during your 80 to 100 inspections, have
6 you developed a specialty in any particular area?

7 A. My primary focus is Clean Air Act
8 investigations.

9 Q. Do you have any particular educational
10 background that qualifies you for the position you
11 hold with NEIC?

12 A. Yes. I have a Bachelor of Science in chemical
13 engineering and petroleum refining from the
14 Colorado School of Mines.

15 Q. What year did you obtain that Bachelor of
16 Science?

17 A. 1993.

18 Q. Do you have any specific training by the EPA
19 for your current position?

20 A. Yes.

21 Q. Okay. If you could tell the jury briefly.

22 A. For example, I attended an air toxics workshop,
23 and I also have done a Method 9 emissions
24 evaluator, taken a course in that.

25 Q. Just briefly, what is Method 9?

1 A. Method 9 has to do with reading opacity out of
2 stacks at industrial facilities.

3 Q. Okay. Have you participated as a faculty
4 member for any EPA trainings?

5 A. Yes. I participated in a benzene waste NESHAP
6 training that was provided in EPA Region 4, which
7 is in Atlanta, in 2010.

8 Q. Were you on the faculty of that training?

9 A. Yes.

10 Q. Okay. Why don't you tell the jury what the
11 benzene waste NESHAP -- you mentioned NESHAP --
12 just tell them what you mean by that.

13 A. Under the Clean Air Act there's a number of
14 regulations. A section of them is NESHAP, which is
15 National Emission Standards for Hazardous Air
16 Pollutants. And this particular training was
17 regarding a specific subpart in the regulations,
18 40 CFR Part 61, Subpart FF, which is the national
19 emissions standard for benzene waste operations.

20 Q. Where -- where is the NEIC?

21 A. The NEIC is located in Denver, Colorado.

22 Q. And do you live in the Denver, Colorado, area?

23 A. Yes.

24 Q. What is the -- the function of the NEIC?

25 A. The NEIC is a field office out of headquarters.

1 We have -- there's two primary functions at NEIC.
2 We have a laboratory that does analysis of various
3 materials, and then we also have a field branch,
4 which is the branch that I'm in, and we conduct
5 inspections for all ten -- the EPA has ten regions.
6 We conduct inspections for all ten EPA regions
7 and/or headquarters, if they ask.

8 Q. How does NEIC determine where to conduct
9 inspections?

10 A. There's -- the regions and headquarters request
11 our support in conducting an inspection. There's
12 kind of an annual process that -- it might vary a
13 little, but typically happens about August of
14 whatever year, because the federal year, we're on a
15 fiscal calendar beginning October 1st through
16 September 30th. So there's a request process that
17 happens prior to the next fiscal year, in which
18 we -- we receive requests to conduct inspections,
19 and then there's a process on how we -- we -- how
20 our management determines which inspections we can
21 do or not.

22 Q. By way of background, in your role at NEIC have
23 you ever testified in a courtroom setting such as
24 this.

25 A. No.

1 Q. How do you feel about testifying here today?

2 MR. PERSONIUS: Your Honor, object to how
3 she feels.

4 THE COURT: I'd like to know, I think.
5 Overruled.

6 THE WITNESS: I'm a little nervous.

7 THE COURT: Okay. We can move on then,
8 please.

9 MR. MANGO: Yep.

10 BY MR. MANGO:

11 Q. All right. Prior to your role in NEIC, have
12 you held any positions in private industry?

13 A. Yes.

14 Q. Okay. Can you tell the jury what -- what
15 position or positions you've held?

16 A. I was employed by a company called Textron
17 Fastening Systems for about five years, and I was
18 the environmental health and safety coordinator
19 there.

20 Q. Okay. Let's switch gears now. Did there come
21 a time when NEIC received a request to conduct an
22 inspection at the Tonawanda Coke Corporation?

23 A. Yes.

24 Q. Okay. When did NEIC receive that request?

25 A. In approximately August-September of 2008.

1 Q. All right. Where did that request come from?

2 A. That request came from EPA Region 2.

3 Q. Okay. Was it a request for a civil inspection
4 or request for a criminal inspection?

5 A. It was a request for a civil inspection.

6 Q. And do you know if that request was approved or
7 denied?

8 A. That request was approved.

9 Q. And as a result of that approval, what happened
10 at that point?

11 A. At that point I was assigned to work on that
12 inspection as the project manager, and other
13 colleagues of mine were assigned to the case also.
14 I was given a contact name in Region 2 that I
15 called, and from them I got who to contact at the
16 state office, the New York State Department of
17 Environmental Conservation.

18 Q. Okay. Did you then contact the DEC, we'll call
19 them?

20 A. Yes.

21 Q. All right. Who did you contact at DEC?

22 A. I contacted Larry Sitzman.

23 Q. And why -- why would you contact Larry Sitzman?

24 A. I contacted him to talk about the facility,
25 Tonawanda Coke, and to schedule a file review at

1 the DEC offices in Buffalo, to learn about -- about
2 the facility and also to tell them that we were
3 planning an inspection for April of 2009.

4 Q. Okay. And subsequently did you review the DEC
5 file?

6 A. Yes.

7 Q. You came to Buffalo before the inspection?

8 A. Yes, I came to Buffalo in February of 2009.

9 Q. Okay. How thorough -- if you can explain for
10 the jury, how thorough was your review of the DEC
11 file?

12 A. It was a cursory review.

13 Q. Okay. Following that review did you reach any
14 conclusions as to previous DEC inspections?

15 A. It appeared, from looking at the file and with
16 discussions with Mr. Sitzman, that the primary
17 focus of the State had been on the coke oven
18 battery part of Tonawanda Coke.

19 Q. Okay. What was the focus of your inspection
20 that you were planning in April of 2009?

21 A. The focus of our inspection was to look at the
22 coke by-products recovery part of the process.

23 That's what the request was from EPA Region 2. And
24 we were primarily looking at two regulations. The
25 NESHAPs that I mentioned before, there's -- there's

1 Subpart FF, the benzene waste operations, and then
2 there's also Subpart L, which is national emissions
3 standard for benzene emissions from coke by-product
4 recovery plants.

5 Q. Okay. So there's specific EPA regulations
6 dealing with emissions from a coke by-products
7 facility?

8 A. Yes.

9 Q. Okay. Did you invite the DEC to participate in
10 your inspection?

11 A. Yes.

12 Q. Did the DEC participate in your inspection?

13 A. Yes.

14 Q. Okay. When was the inspection scheduled to
15 begin?

16 A. April 14th, 2009.

17 Q. Okay. Did there come a time prior to that that
18 you notified the Tonawanda Coke Corporation --

19 A. Yes.

20 Q. -- of your inspection?

21 A. Yes.

22 Q. Okay. All right. Who did you notify?

23 A. I notified Mark Kamholz.

24 Q. And do you recall when you notified him?

25 A. It was the week prior to the inspection,

1 April 8th.

2 Q. Okay. I'd like to pull up on your screen, if
3 we could pull up Government Exhibit 117.113 for
4 identification purposes. Ask you to take a look at
5 that. If we need to zoom in, we can. It is a
6 two-page document, so if you need to see the second
7 page as well, let me know.

8 A. Okay.

9 Q. Do you recognize this document?

10 A. Yes.

11 Q. Okay. Generally speaking, what is this
12 document that you're looking at?

13 A. This document is the notification letter that
14 after I called Mr. Kamholz and told him that we
15 would be coming to conduct an inspection, I sent
16 him an email that included this notification letter
17 that's on the screen, and I -- it also included a
18 document request list.

19 MR. MANGO: Your Honor, absent an
20 objection, the government would move Government
21 Exhibit 117.13 into evidence.

22 MR. PERSONIUS: Could we have a scroll of
23 what the rest of the exhibit is, please?

24 THE COURT: Yes.

25 MR. MANGO: There's the second page, your

1 Honor.

2 MR. LINSIN: Your Honor, it's not
3 immediately apparent -- I don't necessarily have a
4 concern about the document, but it's not
5 immediately apparent what connection this witness
6 has to this document. Perhaps if we could clarify
7 that. And I believe the testimony was that this
8 document was also accompanied by a request for
9 information. I don't know if that is going to be
10 offered simultaneously.

11 THE COURT: Okay. Let's follow up on
12 that, and then, Mr. Personius, if you have any
13 comments, I'll entertain those. Okay?

14 MR. PERSONIUS: Thank you, Judge.

15 THE COURT: All right. But I will not
16 admit it until you further inquire.

17 MR. MANGO: Yes, your Honor.

18 BY MR. MANGO:

19 Q. If we can go to the second page of this letter
20 please. Who signed this letter?

21 A. Gene Lubieniecki.

22 Q. Okay. Who is Gene Lubieniecki?

23 A. He's the Civil Program Coordinator at NEIC.

24 Q. And what relationship in your employment does
25 Gene Lubieniecki have to your position?

1 A. He's not my direct supervisor. He is in charge
2 of the civil program, so we work with him whenever
3 we're conducting a civil inspection. He would be
4 the one that would sign any of those notification
5 letters, and we put in the letter who the contact
6 person is from NEIC, which in this case was myself.

7 Q. Okay. So were you aware that this letter was
8 sent out?

9 A. Yes.

10 Q. Did you request that this letter get sent out?

11 A. I sent the letter in an email.

12 Q. All right. Now, we mentioned a document
13 request as well. Let me -- if we could pull up
14 Government Exhibit 117.12 for identification
15 purposes. This is also a two-page document. And
16 let's scroll to the next page.

17 Okay. Do you see that?

18 A. Yes.

19 Q. All right. Now we can go back. What is this
20 document?

21 A. This is the NEIC document request list that was
22 sent in the email that I sent to Mr. Kamholz, prior
23 to the inspection, to let him know what records he
24 might want to pull together for the inspection so
25 that the inspection goes more smoothly. We tried

1 to give him a heads-up of the types of things that
2 we'll be looking for, and, you know, things like a
3 site map, process flow diagrams, company
4 organizational chart, and then records -- specific
5 records pertaining to the two regulations that we
6 were inspecting.

7 Q. Okay. If we can go to the second page of
8 Government Exhibit 117.12, there's a handwritten
9 note on the bottom there. Do you know whose
10 handwriting that is?

11 A. No.

12 Q. Okay. But absent that handwriting, is this
13 document the information request that you sent?

14 A. Yes.

15 MR. MANGO: All right. Your Honor,
16 limited with that explanation of not knowing whose
17 that handwriting is, which I think will become
18 clear later, but the government would move
19 Government Exhibit 117.13, the cover letter, and
20 117.12, the records request letter -- or
21 attachment, into evidence at this point.

22 THE COURT: All right. Ms. DiFilippo,
23 enlarge the handwriting on the second page of the
24 request for information, please. Okay. Thank you.

25 Mr. Linsin.

1 MR. LINSIN: No objection, your Honor.

2 THE COURT: Okay. Mr. Personius?

3 MR. PERSONIUS: We're trying to figure out
4 if that's Mr. Kamholz's writing, and if we were
5 certain it was, Judge, we would stipulate to it.
6 We think it is, but we're not positive. But we
7 have no objection to the admission of the exhibits.

8 THE COURT: Okay. Then we will receive
9 without objection 117.13, 117.12. And do you want
10 them --

11 MR. MANGO: Yes, your Honor, I'd like to
12 briefly publish 117.13 just so the jury can -- this
13 is the cover letter -- so they can see what
14 Miss Hamre was looking at.

15 THE COURT: All right. First we'll
16 receive without objection 117.13, and it can be
17 published as well. Thank you.

18 (Government's Exhibits 117.12 and 117.13
19 were received into evidence.)

20 BY MR. MANGO:

21 Q. Okay. So now, with this up on the screen here,
22 can you tell the jury again what this is?

23 A. This is a notification letter that I sent to
24 Mr. Kamholz prior to our inspection, about a week
25 prior, in an email, and it's kind of -- it's our

1 standard notification letter, other than down where
2 it -- it shows the Section 14 -- 114 of the Clean
3 Air Act. If we were looking at other medias,
4 water, whatever, there would be other things listed
5 there.

6 Q. Okay. And so you notate here that your
7 inspection is going to be beginning April 14th
8 of 2009. Is that right?

9 A. Yes.

10 Q. All right. And you e-mailed this to Defendant
11 Kamholz?

12 A. Yes.

13 Q. Okay. Now, you -- let me clarify that. Did
14 you later come to meet somebody by the name of Mark
15 Kamholz?

16 A. Yes.

17 Q. Had you met a person by the name of Mr. Kamholz
18 before you spoke to that person on April 8th?

19 A. No, I had not.

20 Q. Okay. The person you later met to be Mark
21 Kamholz, do you see him here in court today?

22 A. Yes.

23 Q. All right. Can you point to him?

24 MR. MANGO: And again, your Honor, the
25 record would reflect Defendant Kamholz is standing

1 at this point.

2 THE COURT: Yes. Blue shirt, blue tie.

3 And the record will so reflect the identification
4 of Defendant Mark Kamholz has been made.

5 MR. MANGO: Great. Thank you, your Honor.

6 BY MR. MANGO:

7 Q. So this was sent to Defendant Kamholz. You
8 e-mailed it to him?

9 A. Yes.

10 Q. Okay. Now if we can go -- I'd like to publish
11 Government Exhibit 117.12 at this point.

12 THE COURT: Okay. That's been received,
13 no objection, and it may be published.

14 MR. MANGO: I'd like to zoom in on that
15 portion. So, why don't you tell the jury --

16 THE COURT: Hold on. Question? No?

17 MR. LINSIN: None, your Honor.

18 THE COURT: Okay. Thank you.

19 BY MR. MANGO:

20 Q. Why don't you tell the jury, please, what we're
21 looking at here, Miss Hamre.

22 A. This is the document request list that was also
23 sent in the email to Mr. Kamholz on April 8th. And
24 this goes through some documents that we would like
25 him to have -- have ready for the first day of our

1 inspection on April 14th, and then we also list
2 some other things that we might look at. But, you
3 know, these are typical things that we would --
4 would request during an inspection. A process flow
5 description, a site map of the facility. We'd ask
6 for an organizational chart to understand how
7 environmental fits into the overall layout of the
8 company. And then depending, like I said, on what
9 type of a facility it is, we would then list out
10 specific records that we would want to look at
11 pertaining to those regulations.

12 Q. Okay. And there is -- right there, 1A, you
13 mention this process flow diagram, is that correct?

14 A. Yes.

15 Q. Why -- why do you request a process flow
16 diagram? What purpose does that serve you?

17 A. When NEIC does an inspection, we try to do a
18 process-based inspection. We like to understand
19 what the facility makes, what the raw materials are
20 coming in, and then what waste would be generated
21 as a result of processing the materials. And then
22 that helps us to understand how the company fits
23 into the regulations and what's required of that
24 company.

25 Q. Okay. Typically when you go out on an

1 inspection, can you tell the jury whether --
2 whether you had -- you have had a previous contact
3 at that facility or previous inspection or whether
4 most of your inspections you have not had such
5 previous contact?

6 A. Most inspections I have not met the facility
7 people until I call them and then meet them when we
8 go to do the inspection.

9 Q. Okay. Does a process flow diagram assist you
10 in learning about the location that you're going to
11 be inspecting?

12 A. Yes.

13 Q. All right. Did you conduct -- we can take this
14 down. Thank you.

15 Did you end up conducting an inspection at the
16 Tonawanda Coke Corporation?

17 A. Yes.

18 Q. Okay. What -- when did that inspection begin?

19 A. The inspection began on April 14th, 2009, and
20 that was a Tuesday.

21 Q. Who was present as part of the inspection team
22 when you arrived on-site?

23 A. It was myself and a colleague from NEIC, also,
24 Ken Garing. There were three people from EPA
25 Region 2: Harish Patel, Mozey Ghaffari and Richard

1 Kan. And there were four from the State DEC
2 office, including Larry Sitzman and Cheryl Webster.
3 I don't recall the other two inspectors' names.

4 Q. Okay. Can you describe the process by which
5 you gained entrance to the Tonawanda Coke
6 Corporation on April 14th of 2009?

7 A. We drove there. There's -- we pulled up.
8 There's a guard shack, and we informed the guard
9 that we were with EPA and we were there to conduct
10 an inspection and our contact was Mark Kamholz.

11 Q. Did you meet a person by the name of Mark
12 Kamholz at that point?

13 A. Yes. The guard called Mr. Kamholz, and he came
14 and met us at the guard shack.

15 Q. All right. And did you proceed to any
16 locations after that?

17 A. We followed him in his vehicle, because there
18 was a distance between where the guard shack is and
19 his offices and a conference room that we were --
20 kind of our home base while we were at the
21 inspection. So we followed him in our car over
22 to -- to that area of the plant.

23 Q. Okay. And you said at some point you made it
24 into a conference room?

25 A. Yes.

1 Q. What happened during this meeting in the
2 conference room?

3 A. We had an opening conference where we went
4 through inspection logistics, tried to -- when I
5 had talked to Mr. Kamholz prior, we tried to find
6 out what typical operating hours are and tried to
7 work within what's his typical operating hours.
8 Then we had -- we presented our credentials. We
9 have EPA credentials that we show at every
10 facility.

11 And then I asked Mr. Kamholz to go through a
12 facility background, and also then he went through
13 a process description of the by-products plant.

14 Q. Okay. So did he provide a facility overview at
15 that point?

16 A. Yes.

17 Q. Okay. And then at some point, you said, he
18 transitioned into an overview of the by-products --

19 A. Yes.

20 Q. -- department?

21 Now, during your inspections do you take notes?

22 A. Yes.

23 Q. All right. And you've maintained those notes,
24 is that right?

25 A. Yes.

1 Q. During the discussion that Defendant Kamholz
2 provided you about the by-products area of the
3 plant, did he provide you with any documents?

4 A. Yes.

5 Q. Okay. What documents were provided?

6 A. He gave us a site map, and he also gave us a
7 one-page process flow diagram of the by-products
8 area.

9 Q. Okay. I'd like to show you Government
10 Exhibit 15.03 for identification purposes.
11 Miss Hamre, do you see that on your screen?

12 A. Yes.

13 Q. Do you recognize this document?

14 A. Yes.

15 Q. What is this document you're looking at?

16 A. This is the coke by-products process
17 description flow diagram that Mr. Kamholz provided.

18 Q. How do you know this is the document that you
19 received from Defendant Kamholz?

20 A. I know it's the document I received from
21 Mr. Kamholz because in the upper right corner of
22 the document there is a notation with my
23 handwriting with a unique number that I log into my
24 notebook.

25 MR. MANGO: Okay. Your Honor, at this

1 point the Government would offer Government's
2 Exhibit 15.03 into evidence.

3 MR. LINSIN: No objection.

4 MR. PERSONIUS: No objection, Judge.

5 THE COURT: Okay. Do you want it
6 published?

7 MR. MANGO: Yes, please.

8 THE COURT: It may be. It's received, no
9 objection.

10 (Government's Exhibit 15.03 was received
11 into evidence.)

12 BY MR. MANGO:

13 Q. All right. If we could focus on this just top
14 half, please.

15 Okay. So, why don't you explain for the jury
16 what -- what document they're looking at now.

17 A. This is the coke by-products process flow
18 diagram that Mr. Kamholz walked through with myself
19 and the other inspectors on April 14th.

20 Q. Okay. Does this by-products -- actually, if we
21 can come back out and get the whole picture in --
22 does this flow diagram indicate that there was a
23 pressure-release valve in the by-products area?

24 A. No.

25 Q. During your discussion, did the issue of a

1 pressure-release valve in the by-products area come
2 up during Defendant Kamholz's presentation?

3 A. Yes.

4 Q. How did it come up?

5 A. Mr. Kamholz was asked if there were any
6 pressure-relief valves, and he said no.

7 Q. Was the light oil recovery system discussed
8 during Defendant Kamholz's presentation?

9 A. Yes.

10 Q. What did he indicate about the light oil
11 recovery system?

12 A. He indicated that the light oil recovery system
13 had been out of service since November 20th of
14 2008.

15 Q. November 20th, 2008. And based on your
16 experience, would that indicate that after
17 November 20th of 2008 there would be more or less
18 benzene in the coke oven gas?

19 A. There would be more.

20 Q. Okay. What happened next after this discussion
21 in the conference room?

22 A. After we finished going through the process
23 flow, we then went out into the plant and did a
24 plant tour of the by-products area.

25 Q. Did that tour include the by-products area?

1 A. Yes.

2 Q. Did Defendant Kamholz, while you were in the
3 by-products area, indicate that there was a
4 pressure-relief valve in the by-products area?

5 A. No.

6 Q. Okay. Did you make some general observations
7 while you did this -- should we call it your
8 initial walk-through?

9 A. Yes.

10 Q. Did you make some observations while you did
11 your initial walk-through of the plant?

12 A. Yes.

13 Q. All right. Please describe what you observed
14 during the walk-through with Defendant Kamholz.

15 A. During our walk-through we went past weak
16 ammonia liquor storage tanks, and they had a large
17 hole in the top of one of them, multiple holes.
18 That's the first thing we saw.

19 The equipment was primarily rusty, appeared to
20 be older. Generally poor housekeeping. Grime and
21 dirt on the ground and around. It didn't appear
22 that the equipment had been painted in quite some
23 time.

24 And then when we got further down the road,
25 there was a containment area, which is a curbing

1 around some of their process units, and the purpose
2 of containment is in case one of the vessels within
3 the curbing would rupture, it would contain
4 whatever was in the vessel instead of dumping onto
5 the ground, maybe get into the stream or whatever.
6 And this containment was halfway full of processed
7 liquids, storm water. There was sludge in the
8 bottom. Appeared to be tar floating in the water.

9 Q. Did you smell anything while you were in the
10 by-products area?

11 A. There was some strong odors, walking past the
12 weak ammonia liquor storage tanks, and still there
13 was a strong smell of ammonia over by the -- this
14 secondary containment that they referred to as the
15 moat. Kind of smelled like tar and other
16 process -- process materials.

17 Q. Okay. I'd like to show you at this point for
18 identification purposes Government
19 Exhibit 150.02.033 -- I'm sorry, .003. 15.02.003.
20 Do you see that on your screen, Miss Hamre?

21 A. Yes.

22 Q. Just generally can you tell the -- tell the
23 jury what --

24 A. That's one of the weak ammonia liquor storage
25 tanks.

1 Q. And was this one of your concerns during your
2 initial walk-through?

3 A. Yes.

4 Q. All right. Who took this photograph?

5 A. I took the photograph.

6 MR. MANGO: All right. Your Honor, I'd
7 ask that Government Exhibit 15.02.003 be
8 published -- or admitted into evidence and
9 published for the jury.

10 MR. LINSIN: No objection, your Honor.

11 MR. PERSONIUS: No objection, Judge.

12 THE COURT: Okay. Received, no objection.
13 May be published.

14 (Government's Exhibit 15.02.003 was
15 received into evidence.)

16 BY MR. MANGO:

17 Q. Okay. If we could just focus in on that.

18 Again, tell the jury what they're seeing here
19 and what your concern was.

20 A. This is one of the weak ammonia liquor storage
21 tanks. And the large holes in the tank and their
22 rusty condition was a concern of the integrity of
23 the tank, and this tank was in service.

24 Q. So this tank was used as part of the ammonia
25 removal system?

1 A. As -- it's the tank that holds the weak ammonia
2 liquor prior to being fed into the ammonia still.

3 MR. MANGO: All right. I'd like to show
4 you for identification purposes Government
5 Exhibit 15.02.008. And absent an objection, your
6 Honor, offer this into evidence.

7 MR. LINSIN: No objection, your Honor.

8 MR. PERSONIUS: No objection, your Honor.

9 THE COURT: Okay. 15.02.008 received, no
10 objection. May be published.

11 (Government's Exhibit 15.02.008 was
12 received into evidence.)

13 MR. MANGO: Thank you, your Honor.

14 BY MR. MANGO:

15 Q. Miss Hamre, what are we looking at here? If
16 you could tell the jury, please.

17 A. The vessel in the -- that I have the arrow on
18 there, that's the surge tank, which is upstream of
19 the previous photo you just looked at. This would
20 feed those ammonia stripper tanks. And this vessel
21 is inside what I talked about, the secondary
22 containment. This is the -- the curb and, you
23 know, in here is the moat area, with the wood
24 pallets and process fluids and storm water inside.

25 MR. MANGO: Your Honor, I'd like to show

1 Government Exhibit 15.02.012, and absent an
2 objection, offer this into evidence.

3 MR. LINSIN: No objection, Judge.

4 MR. PERSONIUS: No objection, your Honor.

5 THE COURT: Okay. 15.02.012 received. No
6 objection, may be published.

7 MR. MANGO: Thank you, your Honor.

8 (Government's Exhibit 15.02.012 was
9 received into evidence.)

10 BY MR. MANGO:

11 Q. Miss Hamre, what are we looking at in this
12 photograph?

13 A. This is another view of the moat area just down
14 from the previous photo.

15 Q. All right. And what is all of this area in the
16 background here, if you could tell us?

17 A. That's -- that's part of the coke by-products
18 recovery plant. You have two tar storage tanks,
19 the two I marked, and then the primary cooler, you
20 can see just the bottom of it in this photo, and
21 then a bunch of piping.

22 Q. Okay. What is the primary cooler designed to
23 do in a by-product -- coke by-product recovery
24 plant?

25 A. To cool the gas coming off of the coke battery.

1 Q. Okay. Why do you want to cool the coke oven
2 gas?

3 A. You need to cool it so that then you can
4 recover the tars and separate out, in some cases,
5 the light oils. Not in their case. And then that
6 gas is reused back in the coke ovens and boilers.

7 MR. MANGO: I'd like to show you
8 Government Exhibit 15.02.014 for identification
9 purposes, and absent an objection, offer that into
10 evidence.

11 MR. LINSIN: No objection, your Honor.

12 THIRD SPEAKER: No objection, Judge.

13 THE COURT: All right. 15.02.014
14 received, no objection. May be published.

15 (Government's Exhibit 15.02.014 was
16 received into evidence.)

17 BY MR. MANGO:

18 Q. Thank you. Miss Hamre, can you tell the jury
19 what we're looking at here in this photograph?

20 A. This is what was called the BH collection tank,
21 and it's also inside the same moat area.

22 Q. And what is collected in the BH tank?

23 A. It's liquor, the water that's sprayed in the
24 primary. I mean, it's kind of a circular loop, but
25 water that's sprayed, used to cool the gas, makes

1 it back to the BH collection tank, and then it's
2 reused to spray again on the coke oven gas header
3 at the beginning of the process.

4 MR. MANGO: I'd like to show you
5 Government Exhibit 15.02.015 for identification
6 purposes. And absent an objection, offer this into
7 evidence.

8 MR. LINSIN: No objection, your Honor.

9 MR. PERSONIUS: No objection, Judge.

10 THE COURT: Okay. Received, no objection.
11 May be published.

12 (Government's Exhibit 15.02.015 was
13 received into evidence.)

14 MR. MANGO: Thank you, your Honor.

15 BY MR. MANGO:

16 Q. Miss Hamre, what is the jury looking at in this
17 photograph?

18 A. This is a pump tied to one of the sumps inside
19 the secondary containment area, that's used to pump
20 the secondary containment area out. I believe that
21 at the time we were there, my recollection is there
22 were eight sumps, but only a couple of the pumps
23 were working at the time.

24 Q. Okay. Is this a rag here?

25 A. Yes.

1 Q. Okay. What was the purpose of that rag?

2 A. There was material leaking out of the piping
3 there, and they placed the rag so it wasn't
4 spraying up as you walked by.

5 MR. MANGO: I'd like to show you
6 Government Exhibit 15.02.060, and absent an
7 objection, offer that into evidence, your Honor.

8 MR. LINSIN: No objection, Judge.

9 MR. PERSONIUS: No objection, your Honor.

10 THE COURT: Okay. 15.02.060 is received,
11 no objection. May be published.

12 (Government's Exhibit 15.02.060 was
13 received into evidence.)

14 MR. MANGO: Thank you, your Honor.

15 BY MR. MANGO:

16 Q. Miss Hamre, can you tell the jury what we're
17 looking at here?

18 A. This is another picture of the moat from the
19 back road toward the landfill side of the facility.
20 And on the far right you see the two tar storage
21 tanks.

22 Q. Would you put arrows on them?

23 Okay. Is there another pump in this area here?

24 A. Yes. I believe that's a pump.

25 MR. MANGO: All right. All right. I'd

1 like to show you Government Exhibit 15.02.018. And
2 absent an objection, your Honor, offer this into
3 evidence.

4 MR. LINSIN: No objection, your Honor.

5 MR. PERSONIUS: No objection, Judge.

6 THE COURT: Okay. 15.02.018 received, no
7 objection. May be published.

8 (Government's Exhibit 15.02.018 was
9 received into evidence.)

10 BY MR. MANGO:

11 Q. All right, Miss Hamre, can you tell the jury
12 now what we're looking at?

13 A. You're looking at two tar precipitator sumps.

14 Q. Why don't you explain what a tar precipitator
15 sump is. First, can you just put the dots where
16 those are on the screen?

17 Okay. Why don't you tell the jury what a tar
18 precipitator sump is.

19 A. The -- in the regulations it would be defined
20 as a tar intercepting sump, and it would receive
21 tar and liquor and be sent to the -- the tar
22 decanter.

23 Q. Now, is there anything significant about this
24 photograph that you're looking at?

25 A. Those two sumps should have been covered and

1 controlled, under Subpart L.

2 Q. That's in the regulations?

3 A. Yeah, that's in the regulations.

4 MR. MANGO: All right. If we can please
5 look at Government Exhibit 01 -- 15.02.019 for
6 identification purposes, and absent an objection,
7 offer this into evidence.

8 MR. LINSIN: No objection, Judge.

9 MR. PERSONIUS: No objection, your Honor.

10 THE COURT: Okay. 15.02.019 received, no
11 objection. May be published.

12 (Government's Exhibit 15.02.019 was
13 received into evidence.)

14 BY MR. MANGO:

15 Q. All right. Miss Hamre, can you tell the jury
16 now what we're looking at? Does this relate to the
17 previous photograph?

18 A. Yeah. The two sumps we were looking at in the
19 prior photograph were at the bottom in the front,
20 but the vessel behind them is the tar precipitator.

21 Q. What happens -- if you can tell the jury, if
22 you know, what happens in the tar precipitator at
23 the Tonawanda Coke facility?

24 A. The tar precipitator charges any -- or
25 remaining tar particles in the coke oven gas, puts

1 a charge on them, and removes them out of the gas
2 stream from going further down the line. That's
3 the intent of the tar precipitator.

4 Q. Okay. And what is this structure? What are
5 these red pipes?

6 A. Those are coke oven gas lines.

7 Q. Okay. Again, part of the piping for the
8 by-products system?

9 A. Yes.

10 MR. MANGO: All right. I'd like to show
11 you Government Exhibit 15.02.020, and absent an
12 objection, your Honor, offer this into evidence.

13 MR. LINSIN: Your Honor, may we approach
14 briefly?

15 THE COURT: I'm sorry?

16 MR. LINSIN: May we approach briefly?

17 THE COURT: Sure.

18 (Side bar discussion held on the record.)

19 MR. LINSIN: Your Honor, we have -- I
20 raised no objection to any photographs depicting
21 conditions. The witness's response to the last
22 photograph cited a violation of a Subpart L of the
23 NESHAP regulations.

24 THE COURT: You mean the covering?

25 MR. LINSIN: Exactly. As the Court may

1 recall, this is certainly not anything that has
2 been noticed under 404(b). My asking to come
3 forward is simply to ensure that there are no
4 additional questions put to this witness or
5 responses from the witness itemizing additional
6 regulatory violations that she may have detected.

7 MR. MANGO: Well, your Honor, the next
8 photo we brought up, actually there is. It's
9 consistent with the other photographs. And I think
10 the -- this witness's observations of what she saw
11 on the ground I think is very compelling here,
12 because the -- their defense argument is that DEC
13 should have been aware of this and missed it. And
14 these photographs are what her observations of the
15 plant there. And I think the jury really needs to
16 get that.

17 I mean, I don't have too many more photographs
18 that she took. She did take a lot. I've culled
19 them down significantly. I do have a few others,
20 but I think it's -- it's important for the jury to
21 get a sense of what it was like on the ground at
22 the Tonawanda Coke facility.

23 THE COURT: Why wasn't this proffered as
24 404(b)?

25 MR. MANGO: Because, your Honor, the

1 government doesn't view this as 404(b) evidence,
2 because this is -- this is the case. This is
3 the -- the -- the -- the inspector's observations
4 of the ground. And once the defendants made this
5 issue that the DEC should have known and missed it,
6 this is -- this is just the very heart of the case.
7 So we didn't feel necessary to raise this as
8 404(b). But regardless, these photographs have
9 been marked as government exhibits since the
10 beginning, and I say all the -- all the iterations
11 of the government exhibit list and --

12 THE COURT: Well, the photographs are what
13 purportedly this witness observed.

14 MR. MANGO: Yes, your Honor.

15 THE COURT: But I think your objection or
16 concern is her testimony that these constitute
17 violations.

18 MR. LINSIN: That is precisely my concern,
19 your Honor.

20 THE COURT: I mean, are you -- are you
21 willing to proceed with the observations with
22 respect to her determination that these violate
23 certain regs?

24 MR. MANGO: I'm sorry? I missed that
25 request.

1 THE COURT: If you continue the
2 examination, there's no objection to the
3 photographs.

4 MR. MANGO: Okay.

5 THE COURT: The concern is her further
6 testimony that what she observed are violations.
7 And my question is: Are you willing to proceed
8 going forward with just her observations and not
9 her determination that that constitutes a violation
10 of a particular regulation?

11 MR. MANGO: Yes, your Honor. I can do
12 that.

13 THE COURT: Okay.

14 MR. MANGO: In the event -- in the event
15 some question comes up during cross-examination as
16 to why -- why the --

17 THE COURT: See, I think you have to do
18 that, at least based on your summary, and I think
19 that's probably true with respect to not having
20 raised it as a 404(b) matter. I'm not so sure I
21 necessarily agree with your argument, but you only
22 have her described as not rendering any opinion
23 with respect to whether something is a violation or
24 not. But if it relates to a conversation she had
25 with Defendant Kamholz, that's a different story.

1 MR. MANGO: Okay.

2 THE COURT: So, does that satisfy you? I
3 think the ground rules are you can proceed with
4 observations but not questions with respect to
5 whether that constitutes a violation of a
6 particular reg.

7 MR. MANGO: I understood, your Honor.

8 MR. LINSIN: And my only question --
9 additional question would be whether -- given the
10 preparation that's been done with this witness,
11 whether a cautionary instruction from counsel to
12 the witness might be appropriate. I do not know
13 what the preparation has consisted of in terms of
14 what's going to be prompted by any given
15 photograph, and I'd rather not have something
16 blurted out and have to come stand up again to
17 object.

18 THE COURT: If we do that, it's going to
19 accentuate that you don't want to get into, because
20 the cautionary instruction would be to the jury?

21 MR. LINSIN: No, no. I'm asking if it
22 might be necessary for Mr. Mango to provide an
23 instruction to his witness not to volunteer
24 information.

25 MR. MANGO: Your Honor, I don't think

1 that's necessary. If the Court wants me to do
2 that, I will. I don't think it's necessary. I'm
3 prepared to show her these photographs. She was
4 prepared, upon being asked, you know, what were
5 your concerns about this photograph. So I just
6 won't ask that question.

7 THE COURT: Okay. We'll leave it at that,
8 all right, because, I mean, just from observing her
9 responses, they're really deliberate as to the
10 question, so if you don't have a question before
11 her, I suspect she is not going to answer it. She
12 is not going to try to read your mind, Mr. Mango.

13 MR. MANGO: I don't think so.

14 THE COURT: Okay.

15 MR. MANGO: Thank you, your Honor.

16 THE COURT: Mr. Personius, anything?

17 MR. PERSONIUS: Thank you, Judge. Thanks
18 for asking.

19 THE COURT: You're welcome.

20 (End of side bar discussion.)

21 THE COURT: You wouldn't believe the
22 progress we made in that discussion, so don't feel
23 left out. Okay?

24 MR. MANGO: Your Honor, I believe I had
25 marked for identi -- may I proceed?

1 THE COURT: You may.

2 MR. MANGO: Thank you. I believe I had
3 marked for identification purposes Government
4 Exhibit 15.02.020 for identification purposes, and
5 absent an objection, I would offer this into
6 evidence.

7 THE COURT: Yes.

8 MR. LINSIN: No objection, Judge.

9 MR. PERSONIUS: No objection, your Honor.

10 THE COURT: Okay. Thank you. No
11 objection. 15.02.020 received. May be published.

12 (Government's Exhibit 15.02.020 was
13 received into evidence.)

14 MR. MANGO: Thank you, your Honor.

15 BY MR. MANGO:

16 Q. Miss Hamre, can you tell the jury what they're
17 looking at here, just what is this?

18 A. This is another sump. It's the secondary
19 cooler sump.

20 Q. Okay. Is this located in the by-products area?

21 A. Yes.

22 MR. MANGO: Okay. I'd like to show you
23 for identification purposes Government
24 Exhibit 15.02.064, and absent an objection, offer
25 that into evidence.

1 MR. LINSIN: No objection, your Honor.

2 THE COURT: Okay. 15.02.064 --

3 MR. PERSONIUS: No objection either.

4 THE COURT: -- no objection. Received.

5 May be published.

6 (Government's Exhibit 15.02.064 was
7 received into evidence.)

8 MR. MANGO: Thank you, your Honor.

9 BY MR. MANGO:

10 Q. Miss Hamre, can you tell the jury what they're
11 looking at in this photograph?

12 A. This is an overview of piping and valving. In
13 front of the -- the bottom of the primary cooler is
14 this reddish-colored vessel behind the piping.

15 Q. Okay. Where was this photograph -- where were
16 you -- did you take this photograph?

17 A. Yes.

18 Q. Where were you standing when you took this
19 photograph?

20 A. On the ground.

21 Q. All right. We can take that down. Thank you.

22 So, now, how long did your inspection last, if
23 you could just tell the jury?

24 A. Our inspection lasted until April 21st, 2009.

25 Q. Okay. And in general detail, can you tell the

1 jury what you did during your inspection?

2 A. During the inspection we looked, we went
3 through the process, asked questions about the
4 process. We went out into the plant a number of
5 times to look at different equipment. We did some
6 monitoring. And a portion of the inspection was
7 looking at the benzene waste that they had in the
8 facility. And then a closeout at the end of the
9 inspection.

10 Q. All right. We'll talk a little bit about that.
11 Now, the photographs we just went through, during
12 your testimony you had said you had some concerns
13 about the facility, is that right?

14 A. Yes.

15 Q. All right. Now, did you take other photographs
16 during the course of your inspection?

17 A. Yes.

18 MR. MANGO: All right. I'd like to show
19 you Government Exhibit 15.02.007 for identification
20 purposes.

21 Absent an objection, your Honor, the government
22 would offer this into evidence.

23 MR. LINSIN: No objection, your Honor.

24 MR. PERSONIUS: No objection, Judge.

25 THE COURT: Okay. 15.02.007 received, no

1 objection. May be published.

2 (Government's Exhibit 15.02.007 was
3 received into evidence.)

4 MR. MANGO: Thank you, your Honor.

5 BY MR. MANGO:

6 Q. Miss Hamre, can you tell the jurors what --
7 what they're looking at in this photograph?

8 A. You're looking at a -- this is the coke oven
9 gas return line, and there's a drip leg coming off
10 the coke oven gas line that's going inside of the
11 moat area. And a drip leg -- even though it is a
12 gas line, there's still some moisture in the gas,
13 and as it has time to cool and move down the line,
14 some condensate will come out. And there's a few
15 drip legs throughout the by-products area, and this
16 is an example of one of them.

17 Q. Okay. Did you take this photograph?

18 A. Yes.

19 Q. Were you standing on the ground during this
20 photograph?

21 A. Yes.

22 Q. Okay. So this depicts one of those drip legs.

23 A. Yes.

24 Q. The drip legs you saw at the Tonawanda Coke
25 Corporation facility, were those in the open

1 position or in the closed position when you saw
2 them?

3 A. As I recall, they were closed.

4 MR. MANGO: I'd like to show you
5 Government Exhibit 15.02.022 for identification
6 purposes, and absent an objection, offer that into
7 evidence.

8 MR. LINSIN: No objection, your Honor.

9 MR. PERSONIUS: No objection, your Honor.

10 THE COURT: Okay. 15.02.022 received, no
11 objection. May be published.

12 (Government's Exhibit 15.02.022 was
13 received into evidence.)

14 MR. MANGO: Thank you, your Honor.

15 BY MR. MANGO:

16 Q. Miss Hamre, what is this photograph that the
17 jury is looking at?

18 A. This is a photo I took of -- this is five drip
19 legs coming in from various locations in the
20 by-products plant.

21 Q. Okay. So a different location than the
22 photograph we just looked at?

23 A. Yes.

24 Q. But more of the same. These are drip legs?

25 A. Yes.

1 Q. Were these also in the closed position?

2 A. As I recall, yes.

3 MR. MANGO: I'd like to show you
4 Government Exhibit 15.02.026 for identification
5 purposes. And absent an objection, your Honor,
6 offer this into evidence.

7 MR. LINSIN: No objection, your Honor.

8 MR. PERSONIUS: No objection, Judge.

9 THE COURT: Received, no objection. May
10 be published.

11 (Government's Exhibit 15.02.026 was
12 received into evidence.)

13 BY MR. MANGO:

14 Q. All right. Miss Hamre, can you tell the jury
15 what we're looking at in this photograph?

16 A. In this photograph in the background you've got
17 the primary cooler, the secondary cooler, some coke
18 oven gas lines, and then this plywood shed here is
19 where they have their exhausters, which the gas
20 comes off the oven, and that provides the mode of
21 force to get the gas back around back to be fed
22 into the ovens. It pulls it on the one side and
23 then pushes it. Once it gets past the exhausters,
24 it's pushing it.

25 THE COURT: What's that structure with the

1 green door?

2 THE WITNESS: I'm not sure what that is.

3 THE COURT: Thank you.

4 BY MR. MANGO:

5 Q. During your inspection did you have a chance to
6 go in the exhauster building?

7 A. Yes.

8 MR. MANGO: Okay. I'd like to show you
9 Government Exhibit 15.02.027 for identification
10 purposes. And absent an objection, your Honor,
11 offer this into evidence.

12 MR. LINSIN: No objection, your Honor.

13 MR. PERSONIUS: No objection, Judge.

14 THE COURT: All right. Received, no
15 objection. May publish.

16 (Government's Exhibit 15.02.027 was
17 received into evidence.)

18 BY MR. MANGO:

19 Q. Miss Hamre, what are we looking at in this
20 photograph?

21 A. This is the light oil column.

22 Q. What is the purpose of the light oil column?

23 A. At the time of the inspection, this portion was
24 out of service, although the coke oven gas was just
25 flowing through it, but you would contact the gas

1 with a heavy wash oil so it could absorb some of
2 the light oils in the gas.

3 THE COURT: All right. Miss DiFillipo, I
4 think it's 15.02.027. Okay. Thank you.

5 BY MR. MANGO:

6 Q. There's a -- the light oil, can you --
7 scrubber -- can you put a dot on it?

8 A. For the -- the light oil column is this tall
9 column here.

10 Q. Okay. What is this white rusted structure to
11 the left of the column?

12 A. I don't recall.

13 Q. Okay. Was it in service at the time of your
14 inspection?

15 A. I do not believe so, no.

16 Q. And we see a little bit of a building there.
17 Do you know what that building was?

18 A. That building, from this angle I'm not certain.
19 I don't believe that is the ammonia still building.
20 I believe that's a maintenance building.

21 MR. LINSIN: Your Honor, just an objection
22 to belief. If the witness has a recollection --
23 I'm just trying to get oriented rather than
24 guessing.

25 THE COURT: Yeah. I think I'll sustain

1 that. You want me to strike the response?

2 MR. LINSIN: I just ask we move on.

3 THE COURT: Okay. Let's move on, please.

4 MR. MANGO: Yes.

5 THE COURT: Thank you.

6 MR. MANGO: I'd like to show you
7 Government Exhibit 15.02.028 for identification
8 purposes. And absent an objection, your Honor,
9 offer this into evidence.

10 MR. LINSIN: No objection, Judge.

11 MR. PERSONIUS: No objection, Judge.

12 THE COURT: Okay. Received, no objection.
13 May be published, please.

14 MR. MANGO: Thank you.

15 (Government's Exhibit 15.02.028 was
16 received into evidence.)

17 BY MR. MANGO:

18 Q. Miss Hamre, can you tell the jury what they're
19 looking at in this photograph?

20 A. This is a picture of the ammonia removal
21 system.

22 Q. And what is the -- again, what is this system
23 here designed to do?

24 A. It's the gas goes through each of these three
25 tanks in the first one and the second one and third

1 one, in series, we call that, from the bottom up to
2 the top, and there's water that's sprayed in the
3 top, and its -- the purpose is to remove ammonia.

4 Q. There is somebody looking at something in this
5 area. Was there anything that you noted in that
6 area?

7 A. There is a sump in that area.

8 Q. Okay. Is that the steam coming out of that or
9 some type of gas?

10 A. Yes, there's steam coming out of the sump
11 there.

12 Q. Is this -- where is this picture taken from, if
13 you can just orient the jury, if you could just
14 tell them where this structure is.

15 A. This would be on the back side. Not the main
16 road that divided the coke battery from the
17 by-products plant, but there was another road on
18 the back side toward the landfill, which is
19 somewhat north, I think.

20 Q. Okay. I'd like to show you Government
21 Exhibit --

22 THE COURT: Before you -- is this an
23 appropriate time to take a break?

24 MR. MANGO: Yes, your Honor.

25 THE COURT: Are you finishing up with this

1 witness or --

2 MR. MANGO: We still have a little bit to
3 go, so this may be a good time to break.

4 THE COURT: Okay. Let's break until 4:00.
5 (Jury excused from the courtroom.)

6 THE COURT: Okay. Thank you.

7 (Short recess was taken.)

8 (Jury seated.)

9 THE COURT: All set? Welcome back. Have
10 a seat, please. Okay. The attorneys and parties
11 are back present. The jury is here. Roll call
12 waived. Witness Martha Hamre is on the witness
13 stand. She's on direct examination, government's
14 case. Government has the burden beyond a
15 reasonable doubt, and the witness has -- remains
16 under oath.

17 You may resume questioning.

18 MR. MANGO: Thank you, your Honor.

19 I'd like to pull up for identification purposes
20 Government Exhibit 15.02.066 for identification
21 purposes. Absent an objection, your Honor, offer
22 this into evidence.

23 MR. LINSIN: No objection.

24 THE COURT: Give me the number again,
25 please.

1 MR. MANGO: 15.02.066.

2 THE COURT: Okay. No objection.

3 MR. PERSONIUS: No objection, Judge.

4 THE COURT: Received, and may be
5 published.

6 MR. MANGO: Thank you, your Honor.

7 (Government's Exhibit 15.02.066 was
8 received into evidence.)

9 BY MR. MANGO:

10 Q. Miss Hamre, can you tell the jury what we're
11 looking at in this photograph?

12 A. This is a photograph of the primary cooler.
13 The red vessel here -- don't know what I just did
14 here. And then the two tar storage tanks are on
15 the left in the bottom here, and just an over --
16 another overview shot of the by-products area.

17 MR. MANGO: All right. I'd like to show
18 you Government Exhibit 15.02.101 for identification
19 purposes. And absent an objection, offer this into
20 evidence.

21 MR. LINSIN: No objection, your Honor.

22 MR. PERSONIUS: No objection, your Honor.

23 THE COURT: Okay. 15.02.101, no
24 objection. Received. May be published.

25 (Government's Exhibit 15.02.101 was

1 received into evidence.)

2 MR. MANGO: Thank you, your Honor.

3 BY MR. MANGO:

4 Q. Miss Hamre, can you tell the jury what they're
5 looking at in this photograph?

6 A. This is a line coming off of the primary cooler
7 routed to the tar decanter, and there was something
8 dripping from above, and I zoomed in to try to get
9 a shot of the pipe with the material on it.

10 Q. That's this material on this line?

11 A. Yes.

12 Q. Okay. Thank you. All right. Did there come a
13 time during your inspection that you came to notice
14 a pipe that was emitting gas periodically?

15 A. Yes.

16 Q. When did you first notice that pipe?

17 A. I first noticed that pipe on Friday, which
18 would be the fourth day of the inspection,
19 April 17th.

20 Q. What -- if you could tell the jury, what
21 exactly did you notice?

22 A. While we were walking out on the main road
23 between the coke plant and the by-products area, I
24 noticed a cloud shadow on the ground, and I looked
25 up in the sky. And it was a clear day, so I turned

1 around to look and see where the -- you know, where
2 the cloud was coming from, and I saw a pipe on the
3 coke oven gas line emitting gas into the air.

4 Q. What have you come to call that pipe?

5 A. The pressure-relief valve. Bleeder valve was
6 also a term used by Tonawanda Coke.

7 Q. Okay. How far off the ground was this release
8 that you said of gas that you observed?

9 A. 40 to 50 feet off the ground.

10 Q. How long did the release last that you
11 observed?

12 A. Approximately 15 seconds.

13 Q. Okay. What did you do at that point that
14 you -- when you observed the release?

15 A. I pointed it out to Ken Garing, who was also
16 part of the inspection team, while we were walking
17 out.

18 Q. What time of day was this?

19 A. This was in the morning.

20 Q. Did you see the pressure-release valve, bleeder
21 valve, release again that morning?

22 A. Yes. A couple of times.

23 Q. Okay. After seeing it release a couple of
24 times, what happened then?

25 A. We -- my colleague and I asked Mr. Kamholz what

1 that pipe was and the purpose of the -- the PRV.

2 Q. Okay. And this was still in the morning on the
3 17th?

4 A. Yes.

5 Q. Okay.

6 MR. PERSONIUS: Pardon me, your Honor.

7 Could we have an identification of who the
8 colleague was that was involved in the questioning?

9 MR. MANGO: Okay.

10 THE WITNESS: Mr. Garing.

11 MR. PERSONIUS: Thank you.

12 BY MR. MANGO:

13 Q. Okay. This was you and Ken Garing?

14 A. Yes.

15 Q. You brought it to -- you brought this to
16 Mr. Kamholz's attention?

17 A. Yes.

18 Q. What was Mr. Kamholz's response?

19 A. His response was that we would have to ask
20 someone else about that, and he said the -- the
21 by-products recovery foreman would be the
22 appropriate person to talk to.

23 Q. Okay. Did there come a time when you got to
24 speak to the by-products foreman about this
25 pressure-release valve?

1 A. Yeah.

2 Q. Okay. When did you speak to him?

3 A. We spoke to him on the Tuesday, April 21st.

4 Q. What day of the inspection was that?

5 A. This was the last day of the inspection, the
6 sixth day that we were on-site.

7 Q. On that day did you take any photographs of
8 this pressure-release valve or bleeder valve?

9 A. Yes.

10 Q. All right. I'd like to show you Government
11 Exhibit 15.02.097 -- which is already in evidence,
12 your Honor.

13 Okay. If you can tell the jury what we're
14 looking at here?

15 A. This is the pipe coming off of the coke oven
16 gas return line, and the valve is right in here,
17 but this is what we refer to as the PRV bleeder.

18 Q. Okay. And you took this photograph?

19 A. Yes.

20 Q. What day did you take this photograph?

21 A. On Tuesday, April 21st.

22 Q. That's the last day of your inspection?

23 A. Yes.

24 Q. And you mentioned the release before. That's
25 the top of the pressure-release valve?

1 A. Yes.

2 Q. How far off the ground is that, the top of that
3 pressure-release valve?

4 A. About 40 feet.

5 MR. MANGO: All right. I'd like to show
6 you Government Exhibit 15.02.103 for identification
7 purposes. And subject to an objection, your Honor,
8 offer that into evidence.

9 MR. LINSIN: No objection, your Honor.

10 MR. PERSONIUS: No objection, Judge.

11 THE COURT: Okay. 15.02.103 received, no
12 objection. May be published.

13 (Government's Exhibit 15.02.103 was
14 received into evidence.)

15 BY MR. MANGO:

16 Q. All right. If you could tell the jury what
17 we're looking at on this photograph.

18 A. This is again a photo of the pressure-relief
19 valve. It's taken from the other side from the
20 previous photo and zoomed in on the valve itself.
21 It doesn't show the top of the pipe. It just has
22 the bottom part of the pipe here.

23 Q. Okay. So I'd ask you if there -- there came a
24 time when you got to speak to the by-products
25 foreman about this pressure-release valve. Right?

1 A. Yes.

2 Q. And did you get to talk to the by-products
3 foreman?

4 A. Yes.

5 Q. All right. And that was on this April 21st
6 day, day six of your inspection?

7 A. Yes. It was on April 21st.

8 Q. What time of day do you remember talking to the
9 by-products foreman?

10 A. It was in the morning.

11 Q. If you can tell the jury why -- why did this
12 happen on the last day of the inspection?

13 A. We had a number of follow-up questions that we
14 were trying to get answered, and we asked
15 Mr. Kamholz again, you know, that we needed to --
16 to have an explanation of this valve on the -- on
17 the piping, so we were out in the plant looking at
18 some other items related to the other two main
19 portions of our inspection, and then we asked
20 Mr. Kamholz -- or told him that we needed to talk
21 about the pressure-relief valve.

22 MR. PERSONIUS: Your Honor, forgive me.
23 Just so we capture it now. The witness has
24 repeatedly referred to "we." Could we have an
25 identification of who that is, please?

1 THE COURT: Yes.

2 THE WITNESS: Mr. Garing.

3 BY MR. MANGO:

4 Q. Let's go back for a second to the Friday, day
5 four, April 17th. When you raised this to
6 Defendant Kamholz's attention, he told you that you
7 would need to speak to somebody else?

8 A. Yes.

9 Q. Okay. Up until that point, whenever you asked
10 him questions, would he give you answers to those
11 questions?

12 A. Yes.

13 Q. Okay. Were there other questions that you
14 asked during your inspection on whatever topic you
15 want to -- any other topics, that Mr. Kamholz
16 referred -- referred you to somebody else?

17 A. There was one other area that he referred us to
18 someone else to answer.

19 Q. Okay. What was that?

20 A. This was regarding their production of
21 different types of coke, furnace coke versus
22 foundry coke, and there's certain provisions in the
23 regulation depending on how much you make of each
24 requires --

25 MR. LINSIN: Your Honor.

1 THE COURT: Hold on, please.

2 Yes, Mr. Linsin.

3 MR. LINSIN: I would object and request
4 that the response be stricken.

5 THE COURT: All right. I will. I'll
6 strike the response as not responsive and run-on,
7 so tailor your questions, please.

8 BY MR. MANGO:

9 Q. Just briefly, what was the other area that
10 Defendant Kamholz would not answer your questions?

11 A. Furnace coke and foundry coke, how much they
12 made of each.

13 Q. Okay. All right. So let's go back to the
14 21st. That's Tuesday. How was the meeting with
15 the by-products foreman -- first, what the name of
16 the by-products foreman you spoke with on that day?

17 A. Pat Cahill.

18 Q. And how did your meeting with Pat Cahill get
19 arranged or come about?

20 A. While we were out in the plant, Mark waved him
21 to come over. He happened to be walking by in the
22 area, so Mark flagged him down.

23 Q. Did Pat Cahill come over?

24 A. Yes.

25 Q. What, if anything, was discussed at that point?

1 A. We talked to Mr. Cahill about the purpose of
2 the pressure-relief valve, what the typical
3 pressure was in the coke oven gas line, and he
4 showed us a shed, not directly below the valve but
5 just a little bit to the right, a small shed that
6 contained instrumentation that had a circular chart
7 that recorded the pressure at that point in the
8 line at the -- right in front of the -- the valve.

9 Q. Did Pat Cahill mention to you how frequently
10 the pressure-release valve released?

11 A. Pat said that it released about every half
12 hour.

13 Q. Okay. And you mentioned he showed you
14 something on the ground in the area?

15 A. Yeah. He opened up a door to a small shed, and
16 in there was where the circular chart was for the
17 current day, and it was recording the pressure in
18 the line.

19 Q. Okay. When you were looking at that circular
20 chart, did he tell you what the pressure-release
21 valve was set to release at?

22 A. He said that they could vary the setting, but
23 that it was set somewhere between 120 and 130
24 centimeters of oil.

25 Q. Okay. What happened after this discussion at

1 this -- I'll call it the shack.

2 A. I asked him how long he kept these charts
3 historically, and he said about 30 days, but that
4 those would be located in his office.

5 Q. And what happened at that point?

6 A. We followed him over to his office.

7 Q. What happened in his office, if anything?

8 A. He -- we got to his office. He was searching
9 through drawers in the office looking for circular
10 charts, and he was having trouble finding the
11 historical charts.

12 Q. Okay. When you saw him having trouble finding
13 those historical charts, did you -- did you tell
14 him anything?

15 A. We told him that, you know, we -- we had other
16 things to look at, so we asked him to find the ones
17 for the time while we were conducting our
18 inspection, and we said we'd want copies of those,
19 and for him to just bring the copies to us in the
20 conference room.

21 MR. PERSONIUS: And pardon me again, your
22 Honor. The witness has referred to "we." If we
23 could have that -- whoever that is identified,
24 please?

25 THE COURT: Yes.

1 THE WITNESS: Mr. Garing.

2 BY MR. MANGO:

3 Q. Okay. During -- during your interaction with
4 Pat Cahill in his office, did you make any
5 observations as to whether Pat Cahill appeared
6 nervous or calm?

7 A. Mr. Cahill appeared nervous and, you know, was
8 frantically trying to find the previous charts for
9 the week while we were there.

10 Q. Okay. Now, did you ultimately obtain copies of
11 those circular charts before you left?

12 A. Yes.

13 MR. MANGO: I'd like to show you a couple
14 of those. I show you Government's Exhibit 20.01
15 for identification purposes. And absent an
16 objection, your Honor, offer that into evidence.

17 MR. LINSIN: No objection, your Honor.

18 MR. PERSONIUS: No objection, Judge.

19 THE COURT: Okay. 20.01 received, no
20 objection. May be published.

21 (Government's Exhibit 20.01 was received
22 into evidence.)

23 BY MR. MANGO:

24 Q. Miss Hamre, can you tell the jury what you're
25 looking at -- what they're looking at on the

1 screen?

2 A. This is one of the circular charts that again
3 records the pressure in the coke oven gas line at
4 the bleeder valve. And, you know, that's -- that's
5 what this -- this line that's going up and down is
6 showing is -- is the pressure at that time it's
7 recording, and it has the -- the times up here up
8 at the -- at the top. Noon, 11:00, 1:00, for
9 the -- that 24-hour -- a 24-hour period would be
10 recorded on -- on one chart.

11 Q. Okay. So this chart you're looking is the
12 24-hour period for -- does that say 4/12/09 on it?

13 A. Yes.

14 Q. And again, at the top that's your initials?

15 A. Yes.

16 Q. Well, the TC stands for what?

17 A. Tonawanda Coke.

18 Q. Martha --

19 A. Martha Hamre, and that was that particular
20 document number that I had received from Tonawanda
21 Coke.

22 Q. Okay. Did you -- would you have logged that
23 into your notebook where you were keeping notes?

24 A. Yes. I would have put that in the document log
25 in the back of my logbook.

1 MR. MANGO: Okay. Let me show you
2 Government Exhibit 20.02 for identification
3 purposes. And absent an objection, your Honor,
4 offer that into evidence.

5 MR. LINSIN: No objection, your Honor.

6 MR. PERSONIUS: No objection, Judge.

7 THE COURT: Okay. 20.02 received, no
8 objection. May be published.

9 (Government's Exhibit 20.02 was received
10 into evidence.)

11 BY MR. MANGO:

12 Q. Okay. Now, Miss Hamre, is this the copy that
13 you received for April 13th of 2009?

14 A. Yes.

15 Q. All right. And just to be clear, you -- when
16 you left the facility did you have copies or did
17 you have the originals?

18 A. We had copies.

19 MR. MANGO: I'd like to show you
20 Exhibit 20.03 for identification purposes. And
21 absent an objection, offer this into evidence.

22 MR. LINSIN: No objection, your Honor.

23 MR. PERSONIUS: No objection, Judge.

24 THE COURT: Okay. 20.03 received, no
25 objection. May be published.

1 (Government's Exhibit 20.03 was received
2 into evidence.)

3 MR. MANGO: Thank you, your Honor.

4 BY MR. MANGO:

5 Q. Now, Miss Hamre, is this the circular chart for
6 4/15/09?

7 A. Yes.

8 Q. Okay. So we jumped from 4/13 to 4/15. Did you
9 ever receive the chart for 4/14/09?

10 A. We did not receive the chart for 4/14/09.

11 MR. MANGO: Okay. Let's look at Exhibit
12 20.04 for identification purposes. And absent an
13 objection, your Honor, the government would move
14 this into evidence.

15 MR. LINSIN: Your Honor, we have no
16 objection to this series of exhibits, if that might
17 be easier.

18 MR. MANGO: That would be.

19 THE COURT: All right. That would take us
20 through 21.0 --

21 MR. MANGO: 20.08 would be the end of that
22 series.

23 THE COURT: Okay. All right. What I'll
24 do is I'll receive all of those, no objection, and
25 they can be published starting with 20.04.

1 MR. PERSONIUS: And so it's clear, Judge,
2 we don't object either, and we agree with that
3 approach.

4 THE COURT: Okay. Thank you.

5 MR. MANGO: Thank you, your Honor.

6 (Government's Exhibits 20.04, 20.05,
7 20.06, 20.07 and 20.08 were received into
8 evidence.)

9 BY MR. MANGO:

10 Q. 20.04, if we could take a look at that. That
11 is the chart for April 16th of 2009, is that right?

12 A. Yes.

13 Q. All right. Lets go to 20.05, now in evidence.
14 Now, this is for April 17th of 2009, is that right?

15 A. Yes.

16 Q. Okay. If we could actually just focus in on
17 this part of the chart, please. April 17th was the
18 day you said you first observed the
19 pressure-release valve releasing?

20 A. Yes.

21 Q. Okay. And in fact, do you see any spikes on
22 this chart that are above 120?

23 A. Yes.

24 Q. Okay. All right. If we could take a look at
25 Government Exhibit 20.06, now in evidence. Is that

1 the bleeder chart for April 18th of 2009?

2 A. Yes.

3 Q. Okay. Let's take a look at 20.07, Government
4 Exhibit 20.07, now in evidence. Is that the chart
5 for 4/19 of '09?

6 A. Yes.

7 Q. Now, that would have been a weekend day? Is
8 that right?

9 A. Yes.

10 Q. Did you go to the site on Saturday or Sunday?

11 A. No, we did -- I did not.

12 Q. Okay. Let's take a look at 20.08, the last
13 chart you received, now in evidence. Okay. If we
14 could focus in on this section of the chart,
15 please.

16 Okay. So, you mentioned that you learned that
17 the pressure setting was set between 120 and 130
18 centimeters of oil.

19 A. Yes.

20 Q. For the spikes that are above 120 to 130, for
21 example there, there, there, could you tell the
22 jury what your interpretation of this chart is?

23 A. That the pressure was --

24 MR. LINSIN: Your Honor -- objection, your
25 Honor. Your Honor, without a little bit more

1 foundation for this witness's capability to
2 interpret these charts, I would request that that
3 question be withdrawn.

4 THE COURT: Okay. Let's see if there's
5 the background to do that. I'll give you some
6 leeway to question. If not, move on, please,
7 without interpretation of the charts.

8 MR. MANGO: Yes, your Honor.

9 BY MR. MANGO:

10 Q. Miss Hamre, were you informed as to how these
11 charts relate to when releases of the
12 pressure-release valve occur?

13 A. Yes.

14 Q. Okay. Can you tell the jury what you were --
15 were you told that by someone?

16 A. We were told that by Mr. Cahill.

17 Q. What did Mr. Cahill tell you with respect to
18 that question?

19 A. He said that the set point was between 120 and
20 130, and so he pointed to some of the peaks, and
21 peaks over that pressure the valve would be open.

22 Q. Okay. So, now, for the jury's benefit, can you
23 tell the jury, for the peaks above 120 to 130, what
24 would that indicate that you were told would happen
25 from the pressure-release valve?

1 A. That coke oven gas would be going out the
2 bleeder valve.

3 Q. Now, if the pressure setting was between 80 and
4 100, would your interpretation of this chart
5 change?

6 MR. LINSIN: Objection to the
7 hypothetical.

8 MR. MANGO: I can rephrase, your Honor.

9 THE COURT: Okay. Do that, please.

10 BY MR. MANGO:

11 Q. If the pressure setting was lower -- again,
12 you're saying you had learned that the pressure
13 setting was between 120 and 130?

14 A. Correct.

15 Q. So any time there was a spike above that, that
16 you were told that would indicate a release into
17 the atmosphere.

18 MR. PERSONIUS: Your Honor, he's just
19 repeating all the testimony, and I object to this.
20 He can ask the question, I think, without repeating
21 the witness's testimony. Object to it.

22 THE COURT: Yeah, there's a little bit too
23 much of that. Sustained.

24 MR. MANGO: If the pressure setting was
25 between 80 and 100, would the frequency of

1 releases, based on what you're looking at here on
2 this chart, be increased or decreased?

3 MR. LINSIN: Objection to the
4 hypothetical.

5 THE COURT: Why can't he ask a
6 hypothetical?

7 MR. LINSIN: Well, your Honor, this is not
8 an expert witness. There's no foundation testimony
9 that the setting at the time that this chart was
10 recorded was anything close to 80. The testimony
11 now repeatedly is that the setting on the dates of
12 the inspection was between 120 and 130 centimeters.

13 THE COURT: All right. I think the
14 absence of a factual basis is what you're really
15 arguing -- right? -- in terms of the -- what
16 becomes a hypothetical question without the
17 underlying facts. Right? No?

18 MR. LINSIN: Well, your Honor, I believe
19 both bases are appropriate. There is no factual
20 basis for the hypothetical, and this witness has
21 not been proffered as an expert.

22 THE COURT: Does the witness have to be an
23 expert in order to respond to a hypothetical?

24 MR. LINSIN: Your Honor, in my experience
25 hypotheticals are typically not posed to fact

1 witnesses.

2 THE COURT: Can I instruct the witness to
3 answer my question, please? I don't know the
4 answer to that. I'm just -- but I'm not sure. I
5 don't think so. I don't think the witness does.
6 But I don't know. I'm not exactly sure. And I'm
7 just sparring a little bit, because I didn't know
8 the answer to that question. And Mr. Linsin
9 probably has more information about that than I do.
10 But I will sustain the objection with respect to
11 the hypothetical.

12 MR. MANGO: Yes, your Honor. I'll move
13 on.

14 BY MR. MANGO:

15 Q. Was there a closing conference with Defendant
16 Kamholz now later this day on the 21st?

17 A. Yes.

18 Q. What did you discuss during your closing
19 conference with Defendant Kamholz?

20 A. We discussed preliminary findings of our
21 inspection the prior six days.

22 Q. Okay. Did the -- did you raise the issue of
23 the pressure-release valve, bleeder valve, with
24 Defendant Kamholz during your closing conference?

25 A. Yes.

1 Q. Now, in your practice in the 80 to 100
2 inspections that you have been on, is it customary
3 during a closing conference to tell the facility
4 whether or not they're in violation of their
5 operating permit?

6 A. No.

7 Q. And why not?

8 A. During our inspections we're gathering
9 information, gathering the facts. We collect that
10 information, take it back, review it, draft a
11 report, provide that to the region that requested
12 our inspection, and the region is ultimately who
13 determines the violations or not.

14 Q. Okay. So is it your responsibility to tell the
15 facility whether they're in violation of their
16 permit or not?

17 A. No.

18 Q. What did you tell Defendant Kamholz with
19 respect to the pressure-release valve setting or
20 the pressure-release valve?

21 A. We told Defendant Kamholz -- it was Mr. Garing
22 who gave the closeout. I was taking the notes.
23 But it was discussed that we would have to check on
24 how the pressure-relief valve fit into their permit
25 and their regulations. That was something that we

1 would be looking at -- into.

2 Q. Following your inspection, did you return to
3 Colorado?

4 A. Yes.

5 Q. Did you prepare anything in Colorado?

6 A. Yes. I prepared an inspection report and a
7 process description of the coke by-products area at
8 Tonawanda Coke.

9 Q. Okay. So, in essence, you prepared your own
10 process flow diagram?

11 A. Yes.

12 MR. MANGO: All right. I'd like to show
13 you Government Exhibit 70 for identification
14 purposes. And absent an objection, your Honor, the
15 government would move this into evidence.

16 THE COURT: This a part of your report
17 that you prepared?

18 THE WITNESS: Yes.

19 MR. LINSIN: Your Honor, we don't object
20 to the introduction of this. I guess -- yeah, we
21 don't -- no objection, your Honor.

22 MR. PERSONIUS: No objection, Judge.

23 THE COURT: Okay. Then I will receive
24 Exhibit 70 without objection. And do you want it
25 published?

1 MR. MANGO: Yes, please, your Honor.

2 THE COURT: All right. Miss DiFillipo, if
3 you'd publish it, please.

4 (Government's Exhibit 70 was received into
5 evidence.)

6 BY MR. MANGO:

7 Q. If you could, Miss Hamre, tell the jury what
8 they're looking at with this document that's now on
9 their screen.

10 A. This is the process -- coke by-products process
11 flow diagram that was generated back in the office
12 by myself and Mr. Garing, a combo of the two of us.

13 Q. Okay. And there's a number of dotted lines on
14 here. What do the dotted lines represent?

15 A. Gas or vapors.

16 Q. Okay. And then the solid lines, what do the
17 solid lines represent?

18 A. Would be liquids or waters.

19 Q. If we can focus -- if we can focus on this just
20 corner section, did you list the pressure-release
21 valve on your process flow diagram?

22 A. Yes, we did.

23 Q. Can you point to it?

24 All right. Did you list the pressure-relief
25 valve, bleeder valve, in your report that you

1 generated?

2 A. Yes, we did. I did.

3 Q. And then where does that report -- where did
4 you send your report for this case to?

5 A. We sent the report to EPA Region 2.

6 THE COURT: Okay. You're saying "we."

7 Did Mr. Garing --

8 THE WITNESS: Sorry.

9 THE COURT: -- did he sign off on this as
10 well? The report?

11 THE WITNESS: I should correct myself. I
12 sent the report, because I was the project manager
13 on this particular inspection.

14 BY MR. MANGO:

15 Q. Okay. After you sent your report to Region
16 2 -- that's in New York City?

17 A. Yes.

18 Q. That's the civil inspectors who had requested
19 you to perform an inspection?

20 A. Correct.

21 Q. Okay. Did you have any responsibility for
22 determining whether any of the items you saw during
23 your inspection were violations or were not
24 violations of their Title V operating permit?

25 A. No.

1 Q. Okay.

2 MR. MANGO: Your Honor, may I have a
3 moment?

4 THE COURT: Yes.

5 MR. MANGO: Thank you, your Honor. No
6 further questions for Miss Hamre.

7 THE COURT: Okay. Thank you.

8 Mr. Linsin?

9 MR. LINSIN: Thank you, your Honor.
10 Good afternoon, Miss Hamre.

11 May I proceed, your Honor?

12 THE COURT: You may. Thank you.

13 CROSS-EXAMINATION BY MR. LINSIN:

14 Q. Miss Hamre, let's start at that exit meeting
15 you were just testifying about. Who was present at
16 the exit meeting?

17 A. At the exit meeting Mr. Kamholz was present;
18 another TCC employee, Mike Trembowicz; two air
19 inspectors from New York State, Cheryl Webster and
20 Larry Sitzman.

21 Q. Those would be individuals with DEC, is that
22 correct?

23 A. Yes, that's correct. And myself and
24 Mr. Garing.

25 Q. Was anyone from Region 2 present?

1 A. No.

2 Q. And how long did the exit meeting last?

3 A. Approximately 30 minutes.

4 Q. Okay. And it -- were you aware that this
5 facility had been issued a Title V permit?

6 A. Yes.

7 Q. You were aware of that before you began your
8 inspection, is that correct?

9 A. Yes.

10 Q. Were you aware that it was DEC that had
11 actually issued that Title V permit to the
12 facility?

13 A. Yes.

14 Q. And the two representatives you just
15 identified, Mr. Sitzman and Miss Webster, were DEC
16 representatives, correct?

17 A. Correct.

18 Q. And were they in a position to hear this
19 discussion about the PRV that you just described?

20 A. Yes.

21 Q. During the course of the inspection, did you
22 have any conversations about the PRV with the
23 personnel from DEC?

24 A. I don't recall.

25 Q. Is that a typical practice, for inspectors who

1 go on a team site facility to compare notes at the
2 end of the day to make plans for the subsequent
3 day?

4 A. The representatives from DEC were not present
5 during the entire inspection. So sometimes they
6 were involved in discussions we had and sometimes
7 they weren't. I don't recall exactly when they
8 were there and weren't there.

9 Q. So am I understanding your testimony correctly
10 that there were kind of debrief meetings among the
11 inspectors after the time you spent at the facility
12 on a day-to-day basis during the course of this
13 weeklong inspection?

14 A. I don't know that I'd call them debrief
15 meetings. We had planning meetings, and
16 Mr. Kamholz was part of those. At the end of each
17 day we would try to give Mr. Kamholz an idea of
18 what we were trying to look at the following day.

19 Q. Okay. I apologize. I may not have been clear
20 in my question. After you left the facility at the
21 end of each day, at the end of each inspection day,
22 did you and the other inspectors get together
23 outside of the facility and talk about the results
24 of the your -- your efforts that day, what you had
25 found, what your plans were for the next day?

1 A. Sometimes.

2 Q. All right. And did you take notes during those
3 meetings?

4 A. No.

5 Q. Do you recall during any of those meetings,
6 the -- let's call them off-site meetings, do you
7 recall discussing the PRV?

8 A. With my colleague, Mr. Garing.

9 Q. Did you discuss the PRV with anyone else?

10 A. Possibly with Region 2.

11 Q. And who would it have been from Region 2 who
12 was present during this week for the -- for at
13 least a part of the inspection?

14 A. It could have been Mr. Patel.

15 Q. And was Mr. Eng present as well?

16 A. No. Mr. Eng was not present at the inspection.

17 Q. Was Mr. Ghaffari a part of those discussions at
18 all?

19 A. I don't recall.

20 Q. So after the 21st, after the closeout meeting
21 on the 21st, did you get together with the other
22 inspectors, with the DEC inspectors, before you
23 flew back to Denver, to have any preliminary
24 discussions about your findings or what the
25 follow-up was going to be?

1 A. No.

2 Q. Let me go back, Miss Hamre, to your
3 preparations for this inspection. I believe you
4 testified that you flew to Buffalo on -- in
5 February of 2009 to review the DEC file and prepare
6 for the inspection, is that correct?

7 A. Yes.

8 Q. How long were you in Buffalo during that visit?

9 A. I flew in one day, went to the office one day,
10 and flew out the next.

11 Q. What office did you go to?

12 A. The Buffalo DEC office.

13 Q. And did anyone else from NEIC come with you?

14 A. No.

15 Q. Before you came, did you have any idea how
16 large the DEC file for this facility was?

17 A. No.

18 Q. Is it your general practice -- in the other
19 inspections that you've testified about conducting,
20 is it your general practice to conduct only a
21 cursory review of the regulatory file of a facility
22 before you start your inspection?

23 A. Depending on how large the file is.

24 Q. Depending on how large the file is really
25 should dictate how much time you spend reviewing

1 it, isn't it? Isn't that true?

2 MR. MANGO: Objection, your Honor.

3 THE COURT: No, I'll permit it.

4 Overruled.

5 THE WITNESS: Can you repeat the question?

6 MR. LINSIN: Shouldn't the size of the
7 file dictate how long you spend reviewing it?

8 MR. MANGO: Object again, your Honor, to
9 the --

10 THE COURT: Same ruling.

11 THE WITNESS: Possibly.

12 BY MR. LINSIN:

13 Q. All right. Miss Hamre, you prepared a project
14 plan before beginning this inspection process, did
15 you not?

16 A. Correct. I did.

17 Q. An eight-page plan setting out the steps that
18 you believe should be followed in order to prepare
19 for and conduct the investigation, correct?

20 A. No.

21 Q. In that project plan there is a section
22 entitled Investigative Methods, is there not?

23 A. I believe so. I don't have it in front of me.

24 Q. Let me see if this refreshes your recollection.
25 Do you recall in the report you authored to prepare

1 for this inspection writing that "To accomplish the
2 investigative objectives, NEIC will take the
3 following actions." Colon. First bullet: "Review
4 the EPA and State database and file information."

5 Do you recall that being step one in the plan
6 that -- for investigative methods that you
7 authored?

8 A. I recall it being a step. I don't recall what
9 order I had them listed.

10 MR. MANGO: Your Honor, I have to object.
11 This is a bulleted list. It doesn't say step one
12 step two, step three. It's a bullet which says
13 NEIC will take the following actions. It's the
14 first bullet. I don't want to characterize this as
15 step one. That's a mischaracterization.

16 THE COURT: Is it listed as the first
17 item? The first bullet?

18 MR. LINSIN: I'm happy to describe it as
19 the first bullet, your Honor.

20 THE COURT: Okay.

21 BY MR. LINSIN:

22 Q. Do you recall that being the first bullet in
23 the plan that you developed?

24 A. Yes.

25 Q. And you said you flew into Buffalo, were here,

1 you went to the DEC office in Buffalo, and then
2 flew back the next day. How long did you spend at
3 DEC's office on the day you reviewed the file?

4 A. I don't recall.

5 Q. Do you recall what time of day you got there?

6 A. In the morning.

7 Q. And do you recall what time you left?

8 A. In the afternoon.

9 Q. And did you meet with personnel while you were
10 there?

11 A. Yes.

12 Q. Who did you meet with?

13 A. Larry Sitzman and Cheryl Webster.

14 Q. And in the time that you spent there from
15 sometime in the morning till sometime in the
16 afternoon, do you have any recollection of how much
17 time it took you to perform the cursory review of
18 the file you testified to on direct?

19 MR. MANGO: Objection, your Honor. Asked
20 and answered. She said she didn't remember.

21 THE COURT: No. Overruled. You may
22 answer.

23 THE WITNESS: Repeat the question, please.

24 BY MR. LINSIN:

25 Q. How much time did it take you to perform the

1 cursory review of the file?

2 A. The number of hours I was at the DEC office.

3 Q. And your testimony is you don't recall how long
4 that was.

5 A. No.

6 Q. Did you review the facility's Title V permit?

7 A. I looked through it.

8 Q. Did you review the HAPS emission studies that
9 the facility had submitted in 2003?

10 A. I recall seeing that document.

11 Q. Did you see it before the inspection?

12 A. Yes.

13 Q. Do you recall reviewing the inspection reports
14 that the DEC air inspectors had filed concerning
15 their inspections of this facility?

16 A. I recall looking at them and talking to the
17 inspectors.

18 Q. And which inspectors did you talk to?

19 A. Larry Sitzman and Cheryl Webster.

20 Q. Did you talk to Gary Foersch?

21 A. I don't recall talking to Gary Foersch.

22 Q. Did you talk to Henry Sandonato?

23 A. I don't recall talking to him.

24 Q. Do you recall reviewing the inspection reports
25 that were identified as full-compliance

1 inspections?

2 A. I don't remember how they were identified.

3 Q. You testified on direct that it was your
4 impression, I believe, that the air inspectors for
5 DEC had focused on the battery at this facility.

6 Do you recall that testimony?

7 A. Yes.

8 Q. Do you recall seeing multiple reports in this
9 file concerning full-compliance inspection --
10 inspections with the facility's Title V permit?

11 A. I don't recall.

12 Q. You might have overlooked those, is that
13 correct?

14 MR. MANGO: Objection, your Honor.

15 THE COURT: No. Overruled. You may
16 answer.

17 THE WITNESS: Restate the question,
18 please.

19 BY MR. LINSIN:

20 Q. You might have overlooked those full-compliance
21 inspection reports.

22 A. I looked at inspection reports. I don't
23 remember what the title was on them.

24 Q. Was it your recollection, Miss Hamre, that
25 Mr. Sitzman and Miss Webster were the DEC personnel

1 who actually performed the inspections at this
2 facility?

3 A. At least some of them, yes.

4 Q. Now, you testified on direct examination about
5 the initial meeting that you had with Mark Kamholz
6 and the other inspection personnel that you
7 referenced. How long did that initial meeting
8 last? On the first day. I'm sorry. On the first
9 day of the inspection, April 14th.

10 A. The initial meeting was a half hour.

11 Q. And was there anyone else from Tonawanda Coke
12 present at that meeting?

13 A. No. There was a sign-in sheet.

14 Q. And was this in a large room, a small room?
15 What size room are we talking about?

16 A. Probably a third of this room, maybe, or a
17 quarter of this room.

18 Q. Fair to say a typical-size conference room?

19 A. Yeah, a conference room.

20 Q. Okay. Now, did you review -- you took notes
21 during this meeting, correct?

22 A. Correct.

23 Q. And did you review those notes before
24 testifying today?

25 A. Yes.

1 Q. And do you recall that during this discussion
2 in the preliminary meeting you asked or someone
3 asked several questions concerning the flare on the
4 battery?

5 A. I recall that.

6 Q. And do you recall being told that there was an
7 emergency flare on the battery, that there was a
8 pilot light that was -- was lit all the time? Do
9 you recall that?

10 A. Yes. On the battery itself.

11 Q. On the battery itself. And do you recall
12 the -- there being also a discussion, when you're
13 talking about the battery, about what would happen
14 with the coke oven gas if the exhausters went down?

15 A. Yes.

16 Q. And do you recall again in the discussion about
17 the battery and this -- these beehiving incidents
18 if the exhausters went down, that there was an
19 indication that the system at this plant was always
20 in a gas -- coke oven gas-deficient position?

21 A. Yes, I recall Mr. Kamholz making that
22 statement.

23 Q. Do you recall in your notes about this
24 conversation that occurred nearly four years ago
25 now -- do you recall in your notes that this

1 reference to a pressure-relief valve that you
2 testified to on direct is actually in this section
3 in your notes where you have been discussing the
4 battery?

5 A. That section of the notes was discussing the
6 overall plant.

7 Q. The discussion of the -- of the topics I just
8 summarized relate to the battery, do they not?

9 A. Some of them do. The coke oven gas deficiency
10 doesn't necessarily reflect just the coke battery
11 itself. That's, to me, the entire plant.

12 Q. Isn't it -- isn't it true, Miss Hamre, that
13 this reference to a pressure-relief valve may well
14 have been a statement regarding the management of
15 coke oven gas on the battery itself rather than
16 someplace else?

17 A. Can you repeat that again?

18 Q. Isn't it true that the discussion about a PRV
19 in this pre-meeting might well have been a
20 reference to the valving situation on the battery
21 rather than some other part in the plant?

22 A. Might well have been.

23 Q. Yes?

24 A. Might have been?

25 Q. Yes.

1 A. Might have been.

2 Q. And given its placement in your notes proximate
3 to the discussion of the battery, that might be a
4 reasonable inference, correct?

5 A. It could be.

6 THE COURT: Okay. That might be an
7 appropriate place to stop for the evening. Ladies
8 and gentlemen, thank you for your attention, and
9 please keep in mind that this is an important case
10 to both sides. Please doesn't prejudge the case.
11 Keep your minds open. And, you know, you've been
12 terrific. I know you've been engaged and following
13 and committed to absorbing as much of this as you
14 possibly can. I urge you to continue doing that.

15 But don't discuss the case. And remember that
16 the way you get to the resolve of the fact issues
17 is through the application of what you're taking
18 in, your discussions that you have with each other
19 at the time that you're in deliberations, and your
20 discussing all of that in terms of the common
21 sense, experience, and intelligence that you all
22 have and share.

23 Please remember that your decision should be
24 fair to both sides, and acknowledge for purposes of
25 going forward, that the government has the burden

1 of proof, and until the case is complete and you
2 decide it and resolve those fact issues, the
3 presumption of innocence remains with the
4 defendants.

5 You've been great. Tomorrow you have to be
6 here at what time?

7 THE JURY: 9:00 a.m.

8 THE COURT: Okay. We'll see you at
9 9:00 a.m. Be safe on the way home, and get some
10 rest, get back here tomorrow, and we're going to
11 proceed forward.

12 Okay. Let's see. Excuse me just one second,
13 please. I'm sorry.

14 Okay. I'm sorry. I was kind of misreading a
15 note that I was just given by Miss Labuzzetta. So
16 I think we can all let you go. All right. And
17 we'll see you tomorrow. Look forward to it. Great
18 to see you. Wouldn't be the same week without you.
19 So we'll see you tomorrow morning at 9:00 o'clock.
20 Okay.

21 And Miss Majerowski, it's okay.

22 A JUROR: Thank you.

23 THE COURT: In the cup.

24 A JUROR: Yes, thank you.

25 THE COURT: Thanks, Chris.

1 (Jury excused from the courtroom.)

2 THE COURT: Okay. Miss Hamre, you can
3 step down. Thank you.

4 My comment in that to Miss Majerowski,
5 apparently she has asked if she could bring some
6 ginger ale in. She has a stomach condition that
7 she needs to tend to, and I told her it was okay.

8 MR. LINSIN: And, your Honor, while we are
9 on that topic, could you also share with us the
10 information you received from Mr. Bauman?

11 THE COURT: Yes, I will. Thank you.

12 MR. PERSONIUS: Judge, may we be seated?

13 THE COURT: Sure. I'm sorry. You haven't
14 sat enough this afternoon, Mr. Personius?

15 MR. PERSONIUS: I thought you might feel
16 more comfortable.

17 THE COURT: No, no. I'm comfortable
18 wherever. No. Mr. Bauman was forthright I
19 believe. He said that he was a high school friend
20 of -- the name escapes me right now.

21 MR. MANGO: Adam Buchbinder.

22 THE COURT: Yes, Adam Buchbinder. And
23 that they've had some conversations since
24 graduation. Occasionally they have gotten
25 together. But, in Mr. Bauman's view, he was not

1 uncomfortable with Mr. Buchbinder being here. He
2 did know -- he thought that the government agency
3 that Mr. Buchbinder was with was the EPA. He said
4 it would not have a bearing on how he felt about
5 the case. He said, you know, he was -- would try
6 to be objective and fair to both sides.

7 I did caution him that, you know, he had the
8 option of letting me know if it would be better for
9 him if Mr. Buchbinder was directed not to be in the
10 courtroom. He said it wasn't necessary. I told
11 him that if he felt as the case progressed that
12 there might be something that was causing him to be
13 of some discomfort, he should let me know, and we'd
14 make arrangements to have Mr. Buchbinder leave the
15 courtroom, not only just for that isolated matter,
16 but, you know, for long term.

17 I think he was reasonably comfortable in that
18 dialogue. Very, very serious. I think he was
19 taking the conversation seriously. And I asked him
20 if he could be fair and impartial and continue to
21 be that way. I think his response was "I believe
22 so." And, you know, I asked him a few times, and
23 essentially my view is that he's committed to being
24 fair to both sides. Okay?

25 MR. LINSIN: Yes, your Honor, okay. My

1 only residual suggestion, your Honor, just given
2 the duration of this trial and hopefully -- and to
3 perhaps to avoid similar types of incidents, not
4 tied to Mr. Bauman, but perhaps that in another day
5 or two to just make the suggestion to the jury that
6 if questions or issues come up, they should perhaps
7 raise it with Chris so that he could then raise it
8 with you, rather than approaching government
9 counsel or defense counsel in the halls or just --
10 just as a prophylactic to avoid these kinds of
11 issues.

12 THE COURT: Yeah, I think that's a good
13 suggestion. Thank you.

14 MR. LINSIN: Thank you.

15 THE COURT: Now, let me ask you about
16 hypothetical questions. I mean, I don't think it's
17 limited -- I know, we'll go, Michelle, one minute.
18 I recall hypothetical questions to lay witnesses.
19 I mean, I think I don't remember it being
20 restricted to experts. Is it?

21 MR. LINSIN: Your Honor, my -- I cannot
22 say I have done fresh research on this, but my
23 recollection has always been that -- that
24 hypotheticals are reserved for experts who are --
25 because it is in the nature of an opinion.

1 THE COURT: But you can have the -- I'm
2 sorry.

3 MR. LINSIN: I stand prepared to be
4 corrected on this, your Honor, but I'm drawing more
5 from my experience than a precise citation to the
6 rule.

7 MR. PIAGGIONE: Your Honor, as far as I
8 know, there's lay opinion is -- is -- can be given.

9 MR. LINSIN: Well, yes.

10 MR. PIAGGIONE: So if it's lay opinion can
11 be given as part of testimony, then hypotheticals
12 would be fair game. As long as it's not asking
13 them for something -- something not based upon
14 their personal knowledge or investigation. In
15 other words, if the jury asked them about something
16 that they have no frame of reference to, then --
17 then you get into expert witness.

18 THE COURT: Well, you're talking about
19 specialized knowledge and training and expertise
20 and that kind of thing.

21 MR. LINSIN: If it is the kind of lay
22 opinion that is based upon, you know, common
23 experience and a witness's common ability to
24 perceive the environment, that's one thing. A
25 hypothetical to me, your Honor, seems quite

1 different. You know, assuming facts that this
2 witness has not seen before or -- and so, it has
3 not been my habit that those types of hypotheticals
4 are typically posed to fact witnesses. I mean, it
5 could mushroom very quickly into a, you know,
6 asking hypotheticals of every fact witness.

7 THE COURT: No, I think you're right.
8 Typically -- Mr. Personius, I mean, do you have a
9 recollection to go back a ways?

10 MR. PERSONIUS: I don't, Judge. And what
11 struck me, and maybe this is not an appropriate
12 consideration, but if it is going to happen, my
13 understanding would be there would have to be
14 notice that you were going to elicit that testimony
15 from that witness. Wouldn't you have to give prior
16 notice that you were going to do it? Not just do it
17 in the middle of a trial?

18 THE COURT: I mean, this is an academic
19 discussion, that's all it is. So, Michelle, you
20 can shut down if you want, because I know you're
21 exhausted.

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CERTIFICATION

I certify that the foregoing is a
Correct transcription of the proceedings
Recorded by me in this matter.

s/Michelle L. McLaughlin
Michelle L. McLaughlin, RPR
Official Reporter
U.S.D.C., W.D.N.Y.